

104 THE ADMINISTRATION'S INITIATIVES TO REDUCE  
REGULATORY BURDENS ON SMALL BUSINESS

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Y 4. SM 1:104-39

The Administration's Initiatives to...

HEARING  
BEFORE THE  
COMMITTEE ON SMALL BUSINESS  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

WASHINGTON, DC, JULY 18, 1995

Printed for the use of the Committee on Small Business

Serial No. 104-39



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## THE ADMINISTRATION'S INITIATIVES TO REDUCE REGULATORY BURDENS ON SMALL BUSINESS

TUESDAY, JULY 18, 1995

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON SMALL BUSINESS,  
*Washington, DC.*

The committee met, pursuant to notice, at 10:05 a.m., in room 2359-A, Rayburn House Office Building, the Honorable Jan Meyers (chairwoman of the committee) presiding.

Chairwoman MEYERS. Today the Small Business Committee will hold a hearing on the administration's initiatives to reduce regulatory burdens on small business. I anticipate that this hearing will be one of a continuing series of oversight hearings on what is actually happening to reduce paperwork and regulatory burdens upon small business. My intent is that these hearings will provide the basis for the committee to develop a report card a year from now on whether initiatives to reduce the regulatory burdens on small business are working.

An early lesson I'm learning in this chairmanship is how much of the committee's role is dedicated to being a watchdog or an advocate for the small business community.

While congressional oversight may not attract the press interest that other legislative activities do, I intend to make oversight a hallmark activity of the Small Business Committee. I'm pleased to say that our subcommittees are already deeply imbued with this spirit. It is critical work which will contribute to revitalizing our mission as a forum for small businesses.

I also want to highlight another feature of this morning's hearings, which I hope will become a practice for the committee's oversight activities. Representatives of the small business community will join in a panel with a spokesperson from the administration. I believe this will better enable a meaningful dialogue between this committee, the administration, and the small business community. There is much common ground and common sense in this approach. I appreciate the administration and Administrator Katzen's willingness to participate in this kind of a forum.

A consensus exists that the cumulative burden, the aggregate cost of complying with Government regulations is too much. Dollar estimates this committee has heard range from \$510 billion in paperwork costs alone to over \$1 trillion in overall regulatory costs. Because of the nature of small business, they impact the small business community disproportionately.

At the White House Conference, President Clinton spoke eloquently on his initiatives to reduce the regulatory burdens on small business. He and the Vice President, who also addressed the conference, referred to the President's March 1, 1995 memorandum to Department and Agency heads to make regulatory reform a priority.

Agency heads were to read all their regulations, the President said, page by page, and indicate to him by June 1 which regulations they would eliminate and which they would modify. They were to note the ones which needed legislative attention in this reinvention exercise.

In the 104th Congress, the Contract with America has already led to passing unfunded mandates legislation, which goes into effect next January, and the Paperwork Reduction Act of 1995, which amends existing law and begins next October 1.

Additional reforms mandating improvements in cost/benefit analysis, risk assessment, protection of property rights, congressional review and regulatory flexibility for small business in promulgating and reviewing regulations await legislative enactment.

Clearly, there are a number of changes taking place now and anticipated in the near future that offer the promise of eliminating the excesses of regulation and paperwork.

It is time to begin the oversight process. With all the emphasis on changes, what is actually happening becomes a compelling question.

For today's hearing I asked the administration to provide a progress report on implementing the President's directives and to participate in this morning's panel. Sally Katzen, the Administrator of OIRA and the President's regulatory traffic cop, is here with us. Jere Glover, the chief counsel for advocacy, the pit bull for small business, is also here.

I have asked our witnesses to think about what are the right questions to ask now and 6 months from now to evaluate whether regulatory burdens faced by small business are actually being reduced. A year from now, I envision the committee issuing a report card on how well the initiatives undertaken to reduce regulatory burdens are working.

Let me turn now to our ranking minority member, Mr. LaFalce, for any opening statement that he would wish to make, and then our first panel. Mr. LaFalce.

Mr. LAFALCE. Thank you very much, Madam Chair, for calling the hearing today to receive a progress report on President Clinton's initiatives to reduce the regulatory burden on business, particularly on small business.

Previous administrations surely have moved toward regulatory reform. I think President Clinton has been much more active and effective than some of his predecessors in taking concrete steps to reduce the often-heard and very legitimate complaints that abound regarding the cost and paperwork involved in complying with Federal regulations.

The Congress, too, is intent on easing the burden on business. We've already passed and the President has signed our Paperwork Reduction Act of 1995, which you and I and indeed 418 Members of the House strongly supported.

Today we will hear testimony regarding President Clinton's memoranda of March 4 and April 21, 1995 directing Department and Agency heads, amongst other things, to review their regulations and eliminate or revise them as needed; to cut, by one-half, where legally possible, the frequency of reports that the public must submit to the Government; to waive or modify penalties against small businesses that are attempting to comply with regulations; and to emphasize that results, not process, is the goal for regulators.

These Presidential directives mark a sea change in the Federal regulatory process and it will take some time for their effects to be felt. They represent a logical, rational approach to cutting the regulatory burden, unlike some of the drastic antiregulatory legislation presently pending in the Congress.

The administration's approach does not assume that all regulations are bad. We have cleaner air and water because of regulation. Correspondingly, the administration does not accept that all so-called reforms are good. I share this view, a measured but determined approach.

I do not want to participate in the compromising of the safety of workers or consumers or children or in threatening the health of the environment under the guise of reform. True reform can be accomplished by either revising or eliminating many of the regulations that are legitimate candidates for such treatment, and I'm in full support of doing exactly that.

I look forward to hearing from today's witnesses. It's a timely hearing and a serious issue in which all Americans really have a stake, and I thank you, Madam Chair.

Chairwoman MEYERS. Thank you very much, Mr. LaFalce. Without objection, all Members will be allowed to submit statements or opening statements.

[Messrs. Flake, Manzullo, Meehan, Poshard, and Baldacci's statements may be found in the appendix.]

Chairwoman MEYERS. I would like to finish the first panel, if we can, within an hour. We would like to hear 10 minutes from the Honorable Sally Katzen, who will give us an update and a report card, and 5 minutes from our other participants, and then we will have questions from the committee. Ms. Katzen.

#### **TESTIMONY OF SALLY KATZEN, ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET**

Ms. KATZEN. Thank you very much and good morning, Madam Chairman and members of the committee. I'm delighted to be here today to talk about what the Clinton administration is doing to lift the burden of regulation from the backs of America's small business.

With your permission, I will submit my prepared statement for the record, make a few brief remarks, and hopefully not use the whole 10 minutes, so that I can be responsive to your questions.

The testimony is quite lengthy. You did not receive it until late last evening because it was not completed until late last evening, but it sets forth in some detail the results of each of the President's directives.



Now, President Clinton has said from the start that Americans trying to start a small business or keep one going should have Government on their side, not on their backs. So, he has asked us all to work hard to cut regulations and to reinvent the way the Government writes its regulations.

The way Federal regulators implement or enforce regulations is just as important as the text of the regulations themselves. I believe that this administration is making historic changes in both. We are scrapping 16,000 pages of the Code of Federal Regulations and injecting another 30,000 pages with a big dose of common sense. Before we're finished, many of the agencies will have slashed the sheer volume of their rules in half, and the remaining rules will be based on a new spirit of partnership.

Now, to show what these changes mean, I want to focus on two agencies which have been the particular subject of comment by small businesses, EPA and OSHA. EPA has adopted a new common sense approach to regulations. They have made commitments to limit the amount of paperwork on small business, to reduce reports and reporting requirements and recordkeeping requirements by 25 percent.

They will institute a one-stop emissions reporting program so that you do not have to file forms for each type of emission into the environment.

Of particular interest to this committee, it will give small businesses a 6-month grace period to correct violations and will provide incentives for self-disclosure and corrections of violations.

It will collaborate with small businesses in evaluating and developing environmentally safer products and processes through its voluntary Design for the Environment program. I would like to submit for the record our March 16, 1995 report, "Reinventing Environmental Regulations," which sets forth each of the initiatives that we have undertaken in this area.

I want to emphasize, however, that one of the most important changes in the EPA's small business relations is that small business owners who come to EPA for technical assistance can use their money fixing problems instead of paying fines.

We had a Presidential event at a small business, a paper company in Virginia, and the owner of that said he can call the EPA and they will come and they will give him diagnostic help. If they find something wrong, they don't bring out their citation pad and immediately write a fine. This is a colossal change in how regulators do their regulation.

It is not, I should add, just limited to EPA because this kind of partnership is now going to be governmentwide. President Clinton has ordered all regulatory agencies to reduce or waive fines when small businesses make a good faith effort to comply. Again, in my written testimony I mention a few of the agencies that have actually implemented different types of initiatives to achieve this result.

Second, small business owners complain about OSHA. It's not that small businesses do not care about worker safety. Most of them care very much, but they're just quite tired of playing OSHA gotcha. This is where the Government inspectors come in, come up with an infraction, which may be of little or no significance, and

you pay a fine. That doesn't make sense. The new OSHA has decided that there is a better way to promote the safety of workers.

The agency learned by its experience and by listening to small businessmen. In Maine a few years ago, OSHA inspectors won top prizes, enforcement honors, for detecting the most violations and levying the biggest fines, but it didn't seem to work because while the fines went up, injuries did not go down.

That didn't make sense. So, they came up with a proposal by talking to the most injury-prone companies. They could get this information from the workers comp information, which was available in Maine. They went to these companies and said, "If you'll institute a comprehensive health and safety program, we will work with you, and we will not sit there and levy fines. We will provide technical assistance."

No more OSHA gotcha. The results were impressive. The companies themselves fixed 14 times more hazards than the OSHA inspectors had ever found. Workers are safer. Maine's worker injury rate improved by over 30 percent in 2 years, and those include injuries that OSHA didn't even have regulations on. Workers were safer.

The ultimate result is that President Clinton made the Maine program the model for the new OSHA, and I'd like to submit the OSHA report, "The New OSHA: Reinventing OSHA, Reinventing Worker Safety and Health," which sets forth the variety of initiatives that OSHA has come up with to implement this on a nationwide basis.

Now, there are other examples that we have come up with as we look sector by sector. Again, the history of this is set forth in greater detail in my written testimony, but there were four other reports that have been released in our on-going regulatory reform initiative dealing with reinventing service to the small business community: Drugs and medical devices, health care—and I know this is of particular interest to small businesses—simplifying pension programs so that small businesses who want to provide retirement benefits to their employees will not be mired in the red tape and the administrative prohibitively expensive costs of putting together—we've gotten rid of family aggregation rules and doing other such things that have really stood in the road of enabling small businesses to be able to provide this type of support to their employees.

You'll read in my written testimony about fast loans with very little paperwork; as I say, pension plans without complex formulas, and the end of quadruplicate—I can't even say it—quadruplicate reports on employee wages and withholding; about how results-oriented partnerships between business and the Government will ensure the safety and effectiveness of medicines, with the FDA curing headaches instead of causing them; and about how the Customs Department is able to enforce trade regulations without holding up shippers or shanghaiing travelers; and dozens of other ways in which we're trying to lift the burdens from the backs of America's small businesses.

We're doing more than just getting off their backs. We really are trying to come and be on their side. We're helping small business owners in ways that the Government has never done before.

Last month, at the White House Conference on Small Business, President Clinton unveiled the U.S. Business Adviser. This pilot project is not a new Government agency. It is not a new Government official. It is the home page of the worldwide web. If successful, as expected, it will give you one-stop electronic access to virtually every Government organization that helps or regulates business.

You can even get the phone number and the names of the people who are writing the regulations. It does help business and regulators keep in touch and keep informed.

Also, 2 weeks ago, in Houston, we opened the first U.S. General Store for Small Business. Now, this is test marketing a whole new concept of retail Government. If you need help with your taxes or help figuring out what rules apply to your business or help getting a loan, just call or stop by. The people are there to help you and to get in touch with people at the agencies in Washington who have the information.

If the customers say that the U.S. General Store for Business is successful, we'll make it a national chain.

These are just some of the things the Clinton administration has been doing to make broad, deep and historic changes that go to the very heart of the relationship between Government and business, large and small, changes designed to lift the burden and lend a hand.

We are proud of our accomplishments and believe that even those which we have already undertaken, the illustrative examples that I've mentioned, are themselves impressive. We believe that this is the right way to reform regulations and the regulatory system.

We recognize that there is more to be done, much more. But the current situation was not created overnight and, notwithstanding all the rhetoric, it cannot be fixed overnight. It takes an enormous amount of effort to change the course of the ship of State even one little bit. But with your constructive, bipartisan support, we expect to continue to make changes, and we believe you will see a difference.

Thank you very much for your attention and I look forward to participating in this panel.

[Ms. Katzen's statement may be found in the appendix.]

Chairwoman MEYERS. Thank you very much, Ms. Katzen. I think next I will go to Jerry Glover because then I think it will give the small business people an opportunity to react. I don't want to turn this into a debate but I do think the ability to react and interreact is important.

So next we will hear from the Honorable Jere Glover at the SBA.

**TESTIMONY OF JERE GLOVER, CHIEF COUNSEL FOR ADVOCACY, SMALL BUSINESS ADMINISTRATION, ACCOMPANIED BY BARRY PINELES**

Mr. GLOVER. Good morning, Madam Chairman and members of the committee. It is always a pleasure to appear before this committee, particularly when it's a matter of great interest to myself and to the Office of Advocacy. With me today is Barry Pineles, who has for many years been a regulatory adviser to the chief counsel



for advocacy in a number of previous administrations—five, I think.

Regulatory reform is a dry subject, but it's important and its importance must not be underestimated. Among the issues receiving the highest votes at the White House Conference was, indeed, regulatory reform. The delegates recognized the importance of this issue.

Small businesses perceive the regulatory burden to be very significant and very dramatic, but when we ask them to identify specific regulations, they have difficulty identifying the specific regulation that affects them the most.

I had, of course, hoped, in asking small business people to give me the regulations, that if they could find those regulations that were really causing the problem, we could attack them quickly, solve the problem, and call it a victory and go home.

Unfortunately, the problem is not quite that easy because there's not one or two regulations that are the problem. It is, indeed, the cumulative burden of the entire regulatory maze that the Government has established through the years that causes small businesses their concern.

In addition, the enforcement policies have been particularly perceived by small business to threaten their very existence. I think we have to recognize that that fear is very significant and very dramatic.

They've all heard stories, many of them untrue but certainly the stories permeate small business precepts. They hear that an inspector walks in, finds problems, and closes them down. They get fined so much that they can't continue in business anymore.

I think it's important that when we address the regulatory reform issue, we don't limit our attention just to the writing and promulgation of regulations. It's important that we look at the enforcement and the compliance mechanisms.

We also have to be careful that we don't set up a situation where small businesses who comply voluntarily incur an economic cost that those who choose not to comply don't have; therefore, placing those who comply at a competitive disadvantage.

So clearly, the issue is complex, and we have to recognize that. Certainly there are questions that we need to address in this committee and within the administration.

First, what is being done to attack the cumulative burden of regulations on small business? Second, how do we measure success? And third, how much deregulation is enough?

What is being done concerning Congress and the administration has been already addressed. The Office of Advocacy has been working very closely with the administration on a number of initiatives to try to make Government agencies recognize their true burden.

Of course, the Regulatory Flexibility Act does provide, while it was passed some years ago, a wonderful road map on how the Government should be treating small business in rulemakings. The procedures are not so clear in the compliance area. Small businesses recognized that importance of the Reg Flex at the White House Conference and made strengthening the act at the top of its recommendations.

How do we measure success? Well, obviously, the most important measurement is the number of dollars saved by small businesses by any regulatory reform initiative. Unfortunately, this test is also the hardest one for us to quantify.

Other tests, such as the reduction in the number of pages in the "Federal Register," the number of pages eliminated from the Code of Federal Regulations, the burden-hours of paperwork required, all go together to identify burden, but there's not one test specifically that gives us the real answer to that question of what is the true cost and burden.

As you probably remember, this committee directed the Office of Advocacy to report to Congress by the end of this year what the cumulative regulatory burden and cost of all Government regulations are on small business. It is a challenge. It is a challenge that we've taken willingly and look forward to responding to you by the end of September. The economic research staff is working on very actively on this report.

But there are a lot of good things that have been happening, and we must recognize that the cost of regulations on small business don't have to continue to have the negative cumulative effect that they've had in the past. Perhaps we can turn that around. That's one of the things we'll also be addressing in our report.

There are two overarching principles affecting this area. One is that regulatory reform is not just regulatory reduction, but the crafting of better, more efficient regulations enforced in a more rational manner. Regulatory reduction is just one of those components. Second efforts at regulatory reform must focus on small businesses because they are the ones that bear the disproportionate cost of the regulations.

These two principles represent goals for regulatory reform. Unfortunately, there is no good direct measure to see when regulatory reform has reached these goals. The committee, in developing a report card, must look at various proxies to measure the various regulatory reform initiatives and see whether they have achieved their objectives.

As I have mentioned, the best measure of regulatory reform success is the actual number of dollars saved by small businesses as a result of reducing the direct burdens on small business. An equally intuitive approach is to ascertain the number of regulations that were withdrawn, the regulations that did not get adopted, or the total number of pages removed from the "Federal Register."

These proxies have flaws either in that they are difficult to calculate or do not paint a complete picture of regulatory reform.

One major component of regulatory burden is paperwork requirements associated with various regulations. This burden can be measured by data accumulated by OIRA in its role as overseer of the information collection process.

The Office of Advocacy also has information from a number of agencies that comply with the Regulatory Flexibility Act. The increase in the number of regulatory flexibility analyses conducted will demonstrate increased concern by Federal agencies of the impact of their proposed regulations on small businesses.

Outreach to small business is critical if agencies are to understand the impact of their proposed regulations. The Regulatory

Flexibility Act was originally passed because Congress felt that the agencies did not fully understand the effect of their actions. We clearly have that same problem in existence today in some agencies. Other agencies are much more enlightened, do a much better job, and conduct much better analyses of their proposals.

While the focus of regulatory reform is rightfully placed on the process of writing regulations, that is only one aspect of the regulatory process affecting small business. I have almost never met a small business person who did not wish to comply with sensible Government regulations. However, I have often met small business people who did not know that they were supposed to comply or how they could comply.

Efforts at reducing fines, increasing voluntary compliance, increasing assistance to small businesses will certainly be another appropriate measure of regulatory reform.

Finally, another measure of regulatory reform might be the number of times that agencies come to Congress requesting that Congress modify existing legislation so that the agency has greater discretion to lessen the burden on small businesses.

All too often we hear from the agencies that, in effect, "Congress made me do it." We need to know how many times they actually come to you and ask you to change laws to allow them to have greater flexibility.

Not only would this show the success of regulatory reform, but it would also be an evidence of a change in the culture of the Federal bureaucracy. Congress and the agencies should be a partner with small businesses, to reduce regulatory burdens.

The regulatory process is not perfect and no one involved in the process on a daily basis would contest the need to improve it. The Office of Advocacy has preached, for nearly 20 years, the need for reform. With this President and this Congress, I feel that we're preaching to the choir.

Everyone wishes to achieve the same goal—letting small businesses innovate, create jobs without the hindrances of unnecessary regulations and fines. Continued vigilance by Congress, OIRA and the Office of Advocacy will certainly help in removing the regulatory shackles from small business.

The measures discussed today in my testimony represent a number of approaches to quantify complex issues—measuring the success of regulatory reform. Thank you.

[Mr. Glover's statement may be found in the appendix.]

Chairwoman MEYERS. Thank you very much, Mr. Glover. Next we will hear from Mark Isakowitz, director of Federal Government relations for the National Federation of Independent Business. Mark?

#### **TESTIMONY OF MARK ISAKOWITZ, DIRECTOR OF FEDERAL GOVERNMENT RELATIONS, HOUSE, NATIONAL FEDERATION OF INDEPENDENT BUSINESSES**

Mr. ISAKOWITZ. Thank you, Madam Chair.

For the record, my name is Mark Isakowitz. I am director for the House for NFIB. NFIB has some 600,000 small business owners as members from across the country in all 50 States. We determine the position of the organization on issues based on regular polling



of the membership. I'm very pleased to be here today and I want to thank you, Madam Chairman, for calling this hearing. This is what our members would like the Small Business Committee to be about, and that is accountability.

We have two basic purposes, two questions to answer today, and I will try to answer them both. I think the first is how is the administration doing in its regulatory reform effort, number one; and number two, how are we to judge it in the future on how it's doing in this effort?

I think in terms of how the administration is doing, I'm reminded of in diplomatic or military discussions we always hear about facts on the ground, that you can have lofty goals and pieces of paper, but you can't ignore the facts on the ground in a battle.

The battle we're talking about, I think here, is the day to day doings of small business owners creating jobs out there.

What we see is an improving tone in the regulatory atmosphere, but still a poor reality. Those are the facts on the ground we're hearing from our members. There's a difference between inside the Beltway, what's being started, and what's actually happening outside the Beltway, which, to us, often looks like one step up, two steps back. Let me just briefly go through some examples.

First, small business owners, based on surveys and other factors, tell us that they do not see any improvement. In "Small Business Economic Trends," which is put out by the NFIB Education Foundation monthly, regulation, along with taxes, are still the top two problems of the small business community. That's as recent as this month. And 46 percent of the business owners in that survey give the administration a poor ranking on economic policies, and even though that's broader than regulations, the day to day contact that our members come into with the Federal Government is usually through regulation and paperwork, more so than pretty much anything else.

Then another indicator that it's a burning problem is when you think about the White House Conference and think about 2,000 business owners coming to Washington on their own dime, and the fact that 5 of the top 10 vote-getting recommendations had something to do with regulatory relief or paperwork simplification, that tells you that there's still a burning problem out there.

The second issue I'd like to bring up in terms of facts on the ground has to do with one agency that hasn't been discussed, which is the one our members seem to like the least, and that is the IRS. What has happened here is you have a phenomenon where, on the independent contractor issue, determining whether or not people who work for you are employees or independent contractors, not a single new regulation has been issued. In fact, the IRA is barred from doing so.

But yet, I just saw a letter to Chairman Archer from a Texas trucking association saying there's an IRS audit going on which may reclassify the entire trucking industry from independent contractors to employees. That puts a bunch of independent contractors out of business and causes a lot of back taxes and penalties to a lot of small business owners who thought they were doing the right thing.

So that's an issue of enforcement, where no new regs have been issued, and we see a serious problem out there.

Third, OSHA. Sally Katzen mentioned some good improvements that have been made in OSHA but, at the same time, NFIB just submitted comments on an indoor air quality reg that has been proposed and is now in a comment period that 77 percent of our members oppose, and a draft of an ergonomics regulation that has been drafted having to do with repetitive motion injuries, and the only repetitive emotion we see coming out of that reg, if it were issued, would be the repetitive motion of filling out paperwork.

Fourth, we still see some problems in EPA. Even despite some of the improvements announced by the administration, in terms of consultation, we are still hearing from members who are getting letters threatening fines when something quite innocent took place.

We hear now that bakers, a lot of small bakers are being told that because they use alcohol in some of their baking, that they are somehow depleting the ozone and that they have to adapt some newer technology to keep that from happening, when we aren't convinced that the science is there to indicate that there's a problem.

Fifth, I'd like to return to this point of inside/outside, inside the Beltway/outside the Beltway. I think when the administration put out the new OSHA reforms, talking about consultation and education, we applauded that. But roughly around that same time, an NFIB member came to town named Norman Barnard from Florida to testify on OSHA reform, and he said the following, and I'll just quote from him briefly.

"In order to move my three security small businesses from the 20th Century into the 21st Century and provide for the safety needs of my employees, I need a program of training, education, consultation and cooperation. I do not need to be told by my local OSHA agency to 'Go look it up in the public library,' which is what I heard from OSHA only last week after asking if any safety pamphlets or literature were available."

Now, that's a good example of where we may start something here, but the entire culture of the regulatory process and the inspectors themselves have to be changed.

Finally, I would make one last point in terms of facts on the ground. There's a whole series of regulatory reform legislation that I think would change the process that our members support and the administration opposes, and we would like to see many of those enacted.

Very briefly—I see I have the yellow light—I want to go through what you might use as a report card. First and most importantly, I think it's important that we judge the legislative proposals, as well as the regulatory reform proposals that come from the administration. The example I'd like to use here is you could create the perfect regulatory atmosphere inside the agency but introduce legislation that, again, is one step up, two steps back.

A good example is in September '93, the administration put out Executive Order 12866, which set a positive tone for cost/benefit analysis and many of the things we would like to see. Again, we applauded that. In that same month, September of 1993, the Health Security Act was proposed. That had, in addition to the

mandate that everybody knows about, had about 27 new regulatory or paperwork requirements in it on small business.

Now, I don't bring that up to rehash it. I just bring it up to say you could create the perfect regulatory atmosphere, but if you don't measure legislation, you have accomplished nothing.

Very briefly, and I will conclude, second, a series of oversight hearings using the President's March memo as a standard, bringing every agency before this committee to see how they're doing on what the President asked them to do to reduce regulations would be extremely useful.

Third, a GAO study taking case studies of specific reg flex analyses and saying what was done right and what was done wrong would, I think, educate the agencies and the people about how reg flex is working.

Fourth, I think, Madam Chair, it would be good to use the bully pulpit of this committee to ask all the business groups, and perhaps GAO, as well, to survey small business owners on a series of regulatory questions so we keep the facts on the ground focussed. How is it playing out there, and is the culture changing?

Fifth, I think we ought to pass a regulatory sunset and review bill so that that just brings some institutional accountability to the process, having to rejustify regulations every several years.

Sixth, I think several of the agencies have reported back to the President by his June 1 deadline, but I think the agencies ought to be asked that all agencies report back right away, not 6 months or a year when we complete the report card but we're past the President's deadline and all agencies should report back.

Seventh, and finally, picking up on a point that Jere Glover made, so that we don't have people saying, "Congress made me do it," we ought to see if the agencies can make a contribution to the corrections day process. There has to be something that they find legislatively that they think is dumb and needs to be thrown out.

So those are the measurements I would look at and again, I would emphasize that it's important that we look at the facts on the ground and how things are really playing out there on Main Street where jobs are being created. Thank you.

[Mr. Isakowitz' statement may be found in the appendix.]

Chairwoman MEYERS. Thank you very much, Mr. Isakowitz.

Next we'll hear from John Paul Galles, president of the National Small Business United.

#### TESTIMONY OF JOHN PAUL GALLES, PRESIDENT, NATIONAL SMALL BUSINESS UNITED

Mr. GALLES. Thank you, Madam Chairman, for calling this meeting. Being at the end of a panel, I can either reduce my statement substantially or move to some other words that might add to what's already been contributed.

I would ask to submit my testimony to the committee, and I guess I would like to also add some information from National Small Business United.

I am John Galles, president of NSBU and have been with NSBU now 8 years. It seems like we've revisited the issue of regulatory reform every year since I've been in Washington and I expect you all feel very much the same way.



I had the opportunity to work with the Reagan administration on regulatory reform, with the Bush administration, and now with the Clinton administration. I will admit that each of those efforts was important and valuable in their own efforts, but understand that each of those efforts have been limited by the very nature of those efforts.

What we're looking for is not necessarily a change in policy, although that is to be the result of our efforts. What we need is a change in the process. It's important to understand that the nature of evolution is change and that we are a country in a very dynamic change at this point in time.

This change is going to occur whether we tackle an inside Reinventing Government effort, as the Vice President and Sally Katzen are doing so well, but it also needs to be taken with the value added of confrontation from the outside, confrontation from small businesses who see problems on a regular basis and deserve to hold their country and their Government accountable. It's time to think about that and how we instill that into the dynamic nature of our Government.

You know we're trying to dismantle some of the institutions we've created, or at least down-size them dramatically. It's important to think about how to make that process on-going, one which contributes to the success of our society and our competitive nature around the country—around the world, excuse me.

I think it's important that we hold the administration accountable, or any administration accountable for their regulatory reform efforts, but I think it's also important that we hold Congress accountable for that.

Yes, we hear from our members, but I expect you hear from your constituents, as well, and it's important for you to contribute to the regulatory reform process, and I expect you and your staffs do that quite often. That's what constituent service is all about, I expect.

I think it's important for us to think about how we measure that progress, and I want to refer to one of the reports that Jere Glover and the Office of Advocacy has produced. It's identified that the growth in employment for small businesses now is really occurring in businesses with fewer than five employees or in businesses with more than 1,000 employees.

I think we ought to analyze what's happening with those businesses in between 5 employees and 1,000 employees. Why are they not growing their jobs? Why are they not increasing their employment? What disincentives are in place, either legislative or regulatory, that inhibit their ability to grow and add workers and expand their ability to compete around the world?

Yes, technology is taking us in a different direction. Technology is supporting the movement of employees into self-employment status. We're seeing a growth of over 2 million self-employed people over the last, I believe it's 4 years.

Yes, that's a result of corporate downsizing, but it's also the advantage of technology, to be able to manage more information and provide greater service out of the home or on an individual basis.

We have created an Annual Report on Small Business as a result of the 1980 White House Conference on Small Business. We now have a history of trends and the experience of small business over

that time that ought to be reviewed. We keep being told that the Japanese reproduce more copies of our small business report than we print in the United States. I bet they're studying what's happening to small business in the United States.

I know that NSBU is visited each week by a number of countries from around the world who come to the United States to learn about the vibrancy of our small business community. How can they get that kind of small business activity going on in their countries? They want to learn about our SBA. They want to learn about Government procurement. They want to learn about how small businesses find capital, how they hire workers, and how they provide benefits to workers. They want to gather some of that same small business spirit from the United States and take that back into their country.

I don't think we're doing a good job of analyzing our own impact on small business. I think the study that Jere Glover has provided us, through the Office of Advocacy, gets us one step along the way, but we'd better analyze our experience over many years, not just an annual report, one that really identifies whether the number of small businesses is growing, whether the number of workers is growing. Let's analyze along Main Street and throughout our towns in this country whether, in fact, we are distributing wealth to more of our constituents, to more of our population, so they can own some of the future of this country.

I think the essential task of this committee, and I hope to God this committee is not done away with in some of the reorganization efforts, is oversight of Government and is oversight of legislative and regulatory actions that affect the small business community.

It's so important for you to watch the impact of Government on small business and see whether, in fact, the small business community of this country is healthy.

Thank you for taking the time, and I look forward to working with you on this task.

[Mr. Galles' statement may be found in the appendix.]

Chairwoman MEYERS. Thank you very much, Mr. Galles. I think we've had a very stimulating and interesting panel this morning, and I'm going to defer to Mr. Skelton to start the questioning. Then we will come back to Mr. Torkildsen.

Mr. SKELTON. Thank you very much. I appreciate this.

This is truly, Madam Chairman, a very important hearing. I'm convinced that so much distrust, dislike of Government comes about as a result of the very subject of which we speak—regulations, particularly as it relates to small businesses.

I've been making notes to myself on horror stories that I have heard, and Sally Katzen, it's nice to see those well bound books. But when my constituents tell me things are different, that's when you will have knocked a home run in your efforts.

I would like to send you a summary of some of my horror stories, if I could—I will not take the time now—and receive your thoughts or responses. But when you see grown men, not weep but sob, as a result of some of these things that just don't make sense, it causes people in the business community and elsewhere to lose faith in what you and I try to do. If that is agreeable with you, Ms. Katzen, I will do that.



Ms. KATZEN. It is indeed agreeable. I have watched with great interest, right now during the debate in the Senate on S. 343, which is the regulatory reform bill in the Senate, Senator Hatch has started each morning with the top 10 ridiculous, stupid, dumb rules. It's interesting to me to look at those and to analyze the kinds of situations that people are concerned about because the point that Jere Glover made is real. In most instances, it has nothing to do with what was written. It has to do with how it's being enforced.

That is why I spent so much time in my opening comments and in my prepared written statement talking about changing the enforcement culture, talking about changing the implementation culture.

Mr. SKELTON. But to do that, you're going to have to have people who have had experience in meeting a payroll. When you speak to the small business owners in my district or elsewhere, and these young men and young women come in who have never met a payroll, who have no idea what it is to run any type of business or to make ends meet, being vicious with them, being rude with them. It's just terrible.

Ms. KATZEN. That is not excusable and the President said this Saturday in his radio address he would never defend an abusive civil servant. He would never defend, as you would not defend if one of your staff spoke sharply to someone on the phone. That's inexcusable. If someone abuses power—

Mr. SKELTON. But those same people come back and come back and come back. I think there ought to be some way of hiring people who know what it is to run a business, rather than the bright young folks that are out to get you. That's the attitude, and no wonder some of these folks have comments and feelings that are ill toward the Federal Government.

Ms. KATZEN. Mr. Skelton, one of the things that we talked about in the initiatives, and it does take time; it will not happen overnight. The gentleman who called an OSHA person and was told to go look it up, I regret that. I'm sorry. If I could change it, I would. We're trying to do that. But you are no—

Mr. SKELTON. Well, then, the question is has that person been reprimanded or fired?

Ms. KATZEN. Well, if that information is made available, that information would be told, but it happens in every business, even in the private sector.

The point that came from the President's initiative, and this is important, I think, to your concern, is he asked each agency to review their own performance criteria. For those agencies that have performance evaluations based on the number of fines or that have them based on the number of citations to remove those, that were interested in compliance, you get what you measure.

For a number of years, like the traffic cop on the beat who got raises because they gave out more parking tickets, that doesn't help safety on the streets. We're trying to change that. We've asked every agency to look through their personnel evaluation systems, if they find any of these reverse incentives or perverse, I should say, incentives, to a customer service mentality.

You know, when we first used the term "customer service," people snickered and they said, "This doesn't make sense." We've repeated it and repeated it and it's beginning to make a difference.

It will take time, but that's exactly what we're about. In my written testimony, a number of the agencies have already found such indices in their evaluation forms and are removing them and are getting the message to the front-line regulators and to the bright young and not so bright young people who are doing the work to say, "There's a better way of doing it." And I think we are seeing differences.

We've gotten hundreds of letters from small banks who are subject to the new OCC bank examination form, and they said they didn't believe it. This was the bank examination form manual. Gene Ludwig at OCC dropped it down to this, and we got hundreds of letters saying, "I had my first exam. I didn't believe it. It was over in an hour. I knew what they were asking; I responded; it was done."

Now, we've gotten a lot of customer satisfaction responses, so I think we're making some difference.

Mr. SKELTON. Ms. Katzen, when I get the compliments, I will tell you.

Ms. KATZEN. Thank you. But in the meantime, I'd be happy to look at the regulations and give you the information on those. I think that kind of dialogue will be very productive.

Chairwoman MEYERS. Thank you, Mr. Skelton. Mr. Torkildsen.

Mr. TORKILDSEN. Thank you, Madam Chair, and I thank the witnesses for their testimony. Just a couple of lines.

First, I'd like to associate myself with the questions of my colleague Mr. Skelton; I have seen clearly the frustration that I certainly see from small business owners in Massachusetts, and it's there throughout the country.

If I could ask, from the other perspective, in a previous role I was commissioner of labor and industries for the Commonwealth of Massachusetts, an agency that regulates businesses quite a bit. When I took over that position, I would ask inspectors, people who went out in the field to look at business sites, "Why do you do things in a certain way?" and the response was always, "Well, that's the way we've always done them."

I mean, how do you break that mentality, because I think that's a large part of the problem. People have been in the mold of harassing business owners and entrepreneurs, and it's almost like they know no other way.

So how, from the Federal Government side, how do you break that mentality that's been there certainly long before the Clinton administration came in? How do you really break that, absent abolishing the total department which may end up happening this year in some cases anyway? How do you really break that mold?

Ms. KATZEN. I think that's the right question to ask and what is driving so much of the National Performance Review, the Reinventing Government that the Vice President is doing, the emphasis on customer service.

We've had a number of seminars with various front-line regulators, and we have found that in some instances, the front-line regulators are doing things because they think that's what's going

to give them the rewards. When they're unleashed to be human beings, they end up being far more responsive.

I think there's also—and, as I said, I won't defend anybody who's abusive, whether it be a civil servant or in the private sector—I think there is a certain amount of irritation, as you called it, frustration, anger, that has built up that has fueled this and has put people in a very unreceptive mode to these kinds of instances.

I met with a group of small business people at one of the first sessions that—Erskine Bowles, then administrator of SBA, and I convened a group of regulated entities and five agencies, and we asked the kinds of regulations that are most troublesome, as Jere Glover was getting to, and I heard zoning restrictions. I said, naively, "Well, that's a local issue. I can't do anything about that."

It doesn't matter. It really doesn't matter because from the small business perspective, if you talking about the cumulative weight, it's State, local and Federal all piled together. It doesn't matter who's caused the problem; they want a response.

Another aspect of it is that I do not believe that civil servants on the Federal payroll wake up each morning rubbing their hands thinking of ways to harass small businessmen. I don't think their objective is to go out and be hurtful or harmful. There may be some, but that is not the mold.

I think most people who are in Government do it to provide a service and are not out to get you. They don't wake up every morning thinking this. I think that we had a reawakening after the Oklahoma City where people began to realize that the bureaucrats who used to be the nameless, evil entity are actually men and women with families, who go to work each morning and try to do their best.

Now, somehow we have to bring out the best in them and dissuade them from being overhanded, overzealous. I think you've asked the right question. We've just begun to try to convey that from the top, we won't tolerate that. We want to bring out the best in them, but it has to happen, I think, at various levels and over time. But that's the right question.

Mr. TORKILDSEN. I thank you for your comments in that area, and I certainly think everyone on the committee would appreciate seeing your efforts as they progress in that area.

Ms. KATZEN. Thank you.

Mr. TORKILDSEN. Another larger question, though; at the end of last month, and I think several times before, the administration has threatened a veto of the regulatory reform bills going through the Congress.

Now, we have a situation where I think we agree that there's too much of a burden, through paperwork and other regulation. Wouldn't it be more constructive if the administration came forward and said what modifications to either the House or Senate plans they could live with, instead of just a veto threat?

Right now we're looking at a situation where there's a possibility that regulatory reform may not go anywhere because there's not enough votes to override a veto and yet the administration is making threats about a veto and not coming forward and saying what case can they or could they not live with in terms of either the House or Senate bills.



Ms. KATZEN. I greatly appreciate that question because the reason I was reluctant to appear this morning and stay for very long is that's exactly what I've been doing on the Senate side. We have indicated very clearly the areas of concern. We have been willing to work with those who want to work with us.

I think part of the problem is that the anger, the frustration, the pent-up hostility has gotten so large that in an effort to fix real problems, and I acknowledge there are real problems, they've gone overboard, and people are asking for as much as they can get because the stars, the moon, the sun is all aligned. Now's the time for reg reform.

Instead of fixing the problem, it's like a pendulum. The system is out of kilter, but instead of fixing it, they're going to send it out of kilter in the other direction. We've said—I've identified very clearly the areas where we have concern. There's any number of pieces of paper, including ways of eliminating those problems, that have been the focal point, and some people are either unwilling to listen or unable or unwilling to accommodate those concerns.

I think it's better to fix the problems we know about. If more needs to be done in the future, so be it, but right now we've got a situation where there's an enormous drain on agency resources.

Chairwoman MEYERS. If the gentleman would yield, you've said that there are areas where you would be willing to compromise rather than simply just threatening a veto and that you have submitted these areas of compromise that you are willing to work with to the Senate. Could this committee see those?

Ms. KATZEN. These are comments on the Senate bill. I mean, the House bills have gone through and we've identified the areas in testimony. But on the Senate floor——

Chairwoman MEYERS. I would just be personally interested in——

Ms. KATZEN. Sure. The four areas that we—I mean, I can go through those with you now. I can let you know what they are.

Chairwoman MEYERS. If you would submit them to us or maybe, because I didn't want to take the rest of Mr. Torkildsen's time and we have some time constraints here, but I would like to know what those are.

Ms. KATZEN. Sure.

Chairwoman MEYERS. Mr. Sisisky.

Mr. SISISKY. I hope he didn't get mad and leave. Thank you, Madam Chairman.

I've been sitting on this committee now for 13 years, through three administrations. I'm a very nonpartisan person, as you know, Madam Chairman. I'll tell you, Mr. Isakowitz, I'm really surprised at your testimony. I see more progress here now than I've seen in those 13 cumulative years.

I sat on this committee, subcommittee meeting after subcommittee meeting, trying to do OSHA reform—the HAZCOM, things like that, giving recommendations to the Secretary of Labor—and we couldn't do anything with it. Fourteen pages of suggestions.

Now, if you think that this thing is going to be done overnight, you're really mistaken. Obviously, you can survey your members, and I know what kind of questions you ask them—"Are you in

favor of income taxes?" Certainly they are not. People aren't in favor of any kind of paperwork, either.

I carried the Paperwork Reduction Act for 3 years, and I got it passed because the Congress did change, and I will admit that. Got it changed just like that. Well, only one person held that bill up in the last Congress.

One thing I will never forget. We went down to the White House and there was a roomful of people, and the President signed that bill. You know what he said? "Nobody, nobody is going to read about it in tomorrow morning's paper" because it wasn't controversial. It was something that Republicans and Democrats voted for, and the President agreed with, but the public or the press doesn't care because it's not controversial. Those are the things that we seem to act on.

Now, independent contractors is another problem that you said we didn't do anything about. We had enough hearings on this committee on independent contractors. We couldn't come up with the right solution. NFIB, your group, sir, couldn't come up—if you remember, we had meetings—we couldn't come up with the right answer. How in heavens do you think the Internal Revenue Service is going to do it?

It can be done, and I'm sure it will be done. I notice when Mr. Isakowitz said it, you looked startled when he said the administration has not done anything. Did you have anything to say about that?

Ms. KATZEN. Well, it's just that the accusation that we haven't issued regulations—there's legislation that says we can't. It's one of the problems that where there is no regulation, then it's going to be decided by the front-line regulators and you'll get disparate results. But the answer there is to authorize the filing of regulations.

Mr. SISISKY. Well, it's one thing that can be solved, and we should solve it because nobody in business should be jeopardized by reaching back and breaking them because they thought that they were safe on their independent contractor status.

Mr. ISAKOWITZ. I'd like to make a couple of comments regarding what you said. I said that there have been several occasions—the OSHA announcement, the original reg reform executive order—where we applauded the tone being set by the administration. I am simply acknowledging a fact you already know, which is, in terms of what's happening out there, we continue to hear, if you don't trust our surveys as I was mentioning, the urgency brought to regulatory issues by the White House Conference, was also extremely high.

All I'm saying is there have been instances where the administration has made a step forward, but what we're hearing out in the field in terms of enforcement and inspections is contrary to the intention announced in Washington, number one.

Number two, we've had instances, like in the case of the indoor air quality reg or a couple of the others I mentioned, or legislative proposals, where you're making one step up or two steps back. But I did nothing that did not acknowledge the one step up.

Second, and I'll conclude with this, and I see that Ms. Katzen would like to say something in response, in terms of the independ-

ent contractor proposal, I'll just mention that we are supporting a proposal right now offered by Mr. Christiansen that has 100 co-sponsors that we think would help clarify it.

Second, a lot of these things—again, it's a matter of attitude by the agency, in this case the IRS, and there are examples where there are business owners out there who really thought they were in a safe harbor, but what we have seen is there's a mentality inside the IRS, with regs or not, that they want to go out and reclassify people.

Ms. Katzen, I was not faulting you for not writing regs. I know you're not allowed to. But I'm saying that's an example where even if you change the way regs are written, it doesn't matter because in this case there is no reg being written; it's just what's happening out in the field.

Mr. SISISKY. I come out of the small business world. Started small, ended up big—the American dream. That's what it's all about. I didn't want any regulations, none, period. I was never happy when I had to fill out any form, any form.

So you're not going to get 100 percent of the people in small business agreeing with everything that we have. There are some things that we have to know, I think.

But I apologize if I seem to come down hard on you because I'll tell you, I felt very negative about what you were saying and I kind of took offense at it because I have seen more done, just in pension reform alone. How many businesses wanted to give their employees pensions but wouldn't do it because of the regulations? And all of a sudden, after all these years, all of a sudden there might be something so people can have pensions.

I congratulate you on that and I'm sincere about that. I'm very impressed, looking at that. Madam Chairman, I look forward to seeing what happens in a year if we do follow through.

I worry about the Paperwork Reduction Act. Just because it passed and was signed doesn't mean that it's really going to happen unless somebody monitors these agencies, and OMB in the law is supposed to do it, and hopefully they will. But certainly a year from now, we can find out what's really happened.

But if we think we're going to make every business person in this country happy when we ease up on those regulations, we're just dreaming. I think what we can do is—and everybody mentions the same thing—and that's just to use common sense, just using common sense application to what we do. Thank you.

Chairwoman MEYERS. All right, thank you very much. I will say that I meant what I said in the opening statement, Mr. Sisisky, that the fun part of this job in some respects is advocating for small business. The hard part of this committee is just kind of the dogged, stubborn business of oversight. I hope to make that really the hallmark of this committee and intend that we have regular oversight hearings and a report card at the end of the year.

John, did you have a comment?

Mr. GALLES. Yes. I would like to encourage you to think about the macro problems, as well. It's important to listen to every individual and be attentive to their needs but I'd like to encourage you to think about measuring the impact on the larger small business community, getting some analysis before this committee of the



trends in the direction of small business creation, business failure, job creation, job losses, and find out what their contribution is within the economy.

Is the small business sector of the country growing or is it decreasing? Is it getting healthier or is it sick? It's important to look at that from this level because I don't know anybody else that's looking at it from that perspective.

Then we can apply some remedies to problems that small businesses have in a much more meaningful way and we can look for the kinds of assistance that ought to be there, whether it's a credit crunch that deserves capital formation and expanded credit availability or whether it's handing a brochure from the OSHA department to a company that needs to know how to comply.

Chairman MEYERS. Thank you. Jere?

Mr. GLOVER. I'd like to say one thing that's not directly focussed on the hearing but might help the committee in its long-term thinking.

The Commissioner of the Internal Revenue Service actually came to the White House Conference. Not only did she speak; she met with small business people; she attended break-out sessions; she answered questions for hours.

The Commissioner was at a session at the White House Conference and the independent contractor issue came up. It was the first time I've ever heard of an IRS commissioner saying, "If you can find a way to do it revenue-neutral, I'm for it and I'll support it."

One of the things that the White House Conference process does, and you'll be asked in a few years whether you want to have another one of them, is engage policy makers in discussing small business while there's some money involved in having this conference demonstrated that where you have an administration that supports the White House Conference process, a lot of good things happen.

We had Cabinet Secretaries and Undersecretaries come to the conference. The administration worked hard to focus regulatory initiatives to make them happen quickly and discuss them at the conference. The pension reform was put through very quickly so that it could be announced at the conference, thereby speeding up the deliberation process within the Government.

We got a lot accomplished at the conference. A lot of things were announced and a lot of things were done in anticipation of the conference. The conference process began to work even before the delegates got here.

Chairwoman MEYERS. Thank you, Mr. Glover. Ms. Kelly?

Ms. KELLY. Thank you, Madam Chairman.

Ms. Katzen, I'm delighted to hear you say what you have said this morning. I'm a small businesswoman. I'm not big; I'm small. I'm from a family of small business people. My husband, my son—we're all small business people. I'm right out there. I'm the cohort that Mark's talking about when he wants to test and look at the effect of what your regulations are.

I'm delighted to think that there is a new attitude. I have yet to see it. I think it would be very wonderful if we are able—I applaud

the NFIB and I applaud you, Mr. Isakowitz, for coming up with actual one, two, three suggestions for how to do this report card.

I am very concerned that what you're trying to do is just not getting out there yet. I know it's been a short period of time, but you said you get what you measure. I'm thinking you get what you hire. I think that when you hire somebody really good, they can get very discouraged if they're given the wrong information about how they need to do their job.

I want to talk to you about one thing that I see, and that is that very often, different things will happen in different agencies who are regulating the businesses that I and my family are in. What I don't see is a talking between the agencies.

I think that it's important that perhaps part of what we focus on is that we don't have one agency coming in and saying, "You must do this," and another agency coming in and saying, "You must do that," and these two agencies are saying things that are exactly opposite.

I think it's important that we make the agencies, in the way that these rules are promulgated and enforced, talk to each other, and I don't see any of that coming out of this testimony. Maybe I've missed something, but I didn't see it.

Have you looked at that? Do you want to answer that?

Ms. KATZEN. Yes. When the Executive Order 12866, which was signed in September of '93, there were four criteria for significance. One was the dollar impact on the economy; one was an on-budget impact. The other was when an action taken or proposed by one agency is inconsistent with or incompatible with an action taken or proposed by another agency, that's a trigger for us to review that regulation. I do that not from an ivory tower, but by sitting down at a table with all or both, as many as are involved agencies.

We had, for example, EPA had asbestos regulations for air emissions. OSHA was looking at asbestos regulations because of the workers who were repairing buildings and found asbestos. We heard there were some potential inconsistencies. I said, "Let's have a meeting." We had the people from the Department of Labor, people from EPA, and I said, "I want to make sure that there is not one inconsistency. If there is ever a time where one of you say 'Do this' and the other one says, 'Do that,'" as you just described, "it is no, nonstarter, cannot happen, will not happen. I don't do that. We won't do that."

That's just one example. We've brought a number of agencies together on transportation of hazardous substance. We've got FDA involved. You've got the Department of Transportation involved. You've got the Postal Service involved. We've brought people together on a variety of other issues where they need to talk with one another.

One of the aspects of the collegial process that has been either the greatest asset or the greatest liability of this administration—I'll let you choose your own verdict on that one—is that we have had a number of instances where we are speaking to one another.

I chair something called the Regulatory Working Group, which was established in the Executive order, which is a forum for describing and discussing these kinds of policy and problem areas, and I've had any number of occasions where the assistant secretar-



ies or the deputy secretaries have now gotten to know one another and will say, "Say, if you're doing this, we're doing something which is a little different; why don't we get our act together? Why don't we figure out a simple way of doing it?"

So we've begun to take steps. I'm not telling you we've fixed all the problems. We've only been here for 2½ years. But I think we have, in our tenure, not promulgated inconsistent or incompatible rules, and when we find them, ferret them out, we try to resolve them.

Ms. KELLY. Are you setting up any way that a small business person who gets trapped by these rules has a way of referring these things to you and getting some sort of an adjudication? Businesses are put in a position where sometimes they don't know what to do, and I don't know personally, from my own business experience, and I'm sure my family doesn't know from theirs, because we are small business people.

How do we do this? Is this something that you're addressing, to tell us how to do this?

Ms. KATZEN. We have been working on this and I've given a number of speeches and other appearances before different business groups. I find that when I say, "If you've got a problem, call me," it's a little bit like saying, in this town, "I'm from OMB; I'm here to help you." It produces the smile and the skepticism. "Oh, yeah, really. She's going to really help us." But we are trying to get that message out and are looking to do that.

There is a provision in S. 343 that would create, as an affirmative defense, if a business is complying with one set of rules, and we wanted a modification on that because it's important that the regulators know. I mean, the classic example is, under the Americans with Disabilities Act, if you have a certain disability, you cannot be repositioned or put in another position. On the other hand, Department of Transportation, for Federal Aviation administration purposes, says that if you have dementia, for example, you can't fly a plane. Now, how do you reconcile those two?

Chairwoman MEYERS. If I could interrupt for just one second, Ms. Katzen?

Ms. KATZEN. Sure.

Chairwoman MEYERS. Let me say that there will be two votes, committee. It's on ordering the previous question and then on the rule on Treasury-Postal.

So I think we can be back here in 10 minutes, and we will start at that time, with your permission, Mr. Poshard and Mr. Luther, if we can move to the next panel. Is that acceptable? And then we will start questioning with you on the next panel.

Mr. POSHARD. My comments were all directed toward this panel, Madam Chairlady, but if you insist on moving on, that's OK.

Chairwoman MEYERS. The reason is because we have some people who asked if they could leave at 11 o'clock from this panel, and they've already overstayed a half an hour. So, I would like to move to the next panel, if I could. The timing is just difficult.

I thank you all very much for being here. Any questions that you have, we would like to have you submit to these panel members.  
[Recess.]

Chairwoman MEYERS. The committee will come to order. Tom, if you will take your place and we'll start with you. Then we'll hear from the rest of the panel.

Thank you very much for being with us today, Mr. DeLay. You have been a small businessman. You have been a point man for regulatory reform. You're chairman of the Speaker's Task Force on Regulatory Reform, and we very much appreciate having you here today to share your insights.

**TESTIMONY OF THE HONORABLE TOM DELAY, A  
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. DELAY. Thank you, Madam Chairman. I tell you, I really appreciate your leadership on this committee and fine work that's being done by the Small Business Committee. To a small businessman like me, it reinvigorates the notion that the Government does care about small business and wants to do all it can to remove the shackles of small business put on them by the Federal Government.

I'm very pleased to have been asked to testify on this vital issue of regulatory oversight. For me, for far too long, the legislative branch has abdicated its responsibility for overseeing the regulatory activities of the executive branch to the point that one could argue that a fourth branch of Government was created—the regulatory bureaucracy.

Moreover, regulations impact the small businesses of America in a way that is disproportionate to those felt by larger businesses, and I commend this committee for focussing on this aspect of the regulatory burden.

A typical American business must fulfill provisions of the Clean Air and Water Acts, provide a minimum standard of living for workers, engage in recycling, carry an expensive insurance policy against product liability, ferret out illegal aliens, provide costly packages of medical benefits to employee, provide special accommodation to disabled employees, and provide equal opportunity as determined by race, sex, and age.

As a perfect example, an article in yesterday's *Washington Post* described in great detail the multilayered stacks of paperwork requirements that Drypers Corporation, a small paper diaper company based in Houston, must navigate on a daily basis.

Besides the incredible number of hours, money, and effort spent filling out and complying with these requirements, an even bigger problem for Drypers is that these regulations have a worse effect on its profit proportionately than on that of its larger competitors. The inverse relationship between the size of the regulatory burden on small businesses and the number of jobs small businesses are able to create is well understood.

In light of this fact, it's truly unfortunate that small business owners spend at least a billion hours a year filling out Government forms, at an annual cost of \$100 billion, according to the Small Business Administration. In response to the American people's cries for relief, this Congress has made it one of its priorities to reduce the burden of Federal overregulation, bring sound science and common sense into the process and then ensure that agencies are complying with these standards.

So far, the House has passed unfunded mandates, paperwork reduction, risk assessment, cost/benefit analysis and an improved reflex act, among the other reforms. Two of these, the unfunded mandates and paperwork, as you know, Madam Chair, have been signed into law. I think having these laws in place and actually seeing the results are two very different things, however.

Since he came into office, President Clinton has repeatedly expressed a desire to reform the regulatory system. In September of 1993, he introduced an Executive order which established a revamped regulatory review process. Just last March he issued a memorandum to all executive departments and agencies, asking them to cut obsolete regulations, reduce red tape, work with the grassroots, and negotiate instead of dictate.

As part of cutting obsolete regulations, the President asked his department and agency heads for a list of regulations that should be eliminated or modified, whether by administrative or legislative action, to be delivered to him by June 1.

Now—what is today?—July 17 or so, 18, actions speak a lot louder than words. As far as I know, no such comprehensive list has been delivered to the President, and it certainly has not been made public. I would love to see that list so that this and other congressional committees could consult with the executive branch as they work to identify needless regulations to place on our corrections calendar.

Further, despite his seemingly good intention, there is little evidence that any reduction in the regulatory burden is taking place. In fact, the opposite is true. The number of regulatory bureaucrats is increasing, the number of pages in the Federal Register is higher each year, and excessive and unnecessary rules continue to be promulgated by agencies.

Costly rule-making has been proposed on indoor air, chlorine, ergonomics and emissions testing, among other areas. In the process of promulgating regulations, departments are clearly not complying with the guidelines set by their own President.

A study was conducted recently by the Institute for Regulatory Policy on all EPA proposed and final rules published in the Federal Register during the second 6 months after President Clinton's Executive order took effect. It found that out of 222 substantive rule-makings, only 6, only 6 offered a determination that there was a compelling public need for regulation, and only 6 rule-makings demonstrated that the benefits justified the cost of the regulations.

Rather than laying all the blame on the executive branch, however, I would contend that the legislative branch, for many years, didn't do everything it should, either. Agencies have been legislating through regulation and past Congresses did little to stop them.

This Congress is different, however. This committee hearing is a prime example of what is occurring regularly so that there is a constant dialogue between the two branches and Congress can assert its proper role of oversight.

In this case, we should ask why the agencies aren't complying with the President's Executive order and if they are fulfilling the requirements of the Paperwork Reduction act. The departments and agencies should be prepared to respond.



Again, small businesses are the job-creating engines of the U.S. economy, and we should do everything we can do to reduce the burden of excessive regulations. I hope the executive branch will bear this in mind as it promulgates regulations in the future, and I thank the committee for listening to my testimony.

[Mr. DeLay's statement may be found in the appendix.]

Chairwoman MEYERS. Thank you very much for being here, Mr. DeLay. We did hear from Sally Katzen this morning, the administrator of OIRA in OMB, and I think she attempted to answer our questions. It raised a few more questions in my mind, however, and we will keep pursuing this and make oversight a chief function of this committee because it doesn't, as you said, it doesn't do any good to pass the laws if we don't follow through and see that something happens later.

The point was made by some committee members, also, that even if you ease up on some of the regulatory burden, that if the climate is still such so that the people are being overzealous in pursuing this in a punitive manner, rather than in a helpful manner, that you're still not going to accomplish what you need to accomplish.

I would ask if there are those who have questions of Mr. DeLay because I'm sure that he has to be on his way before we turn to our next panel. Mr. Bartlett.

Mr. BARTLETT. Thank you very much. I appreciate your testimony.

As you mentioned, the rhetoric in the President's 1993 Executive order—if I hadn't looked at where it came from, I might have suspected it came from the Republican Conference. The rhetoric is really great. The reality has been something quite different from that.

I have a recent anecdotal example, and I'd just like to cite that and then ask you, is there something more that we need to do in the Congress?

The Maryland legislature, which is hardly a citadel of conservatism, passed in their last legislative session a law which said that MOSHA, which is the Maryland equivalent of OSHA, on first offenses, were required not to levy a fine and were to work with the business for 30 days. It was not signed into law by the governor because OSHA said that they were going to decertify MOSHA in Maryland and they were going to come in and do it themselves if the governor signed that bill. So, he vetoed the bill.

Now, this is just exactly the kind of thing that I thought the President was asking for in his 1993 Executive order. Obviously, his Executive order isn't working. Is there something more that the Congress can do to make sure that we bring some sanity to the implementation of our laws and these regulations?

Mr. DELAY. Well, certainly, Mr. Bartlett. Right across the hall, the Appropriations Committee is marking up the VA, HUD, and Independent Agencies Subcommittee, on which I serve. In that subcommittee is the Environmental Protection Agency.

We have many pages in that bill that go specifically to some of the outrageous extremism that is imposed on the country through regulations by the EPA. I'll give you a perfect example. It sounds small, but it has a big impact on pointing out that the President's actions do not fit his words.

Time and time again, before our subcommittee, the EPA and Carol Browner, the Administrator, talked about how we are going to work with businesses rather than punish them, yet they are opposing an amendment offered by me on self-audits, which is just exactly what the President has asked for in working with businesses.

Self-audits are a company will go in and do an audit on its own environmental practices and if it finds violations to the regulations, you would think that they would be praised if they fix those regulations. Indeed, the EPA is fining them, when they find their own violations. We're saying if the company goes in and finds their own violations and fixes it, they ought to be praised for it and the EPA ought to work for it. They are opposing that amendment—the EPA is, the President's EPA.

I could go chapter and verse throughout the bill. But what we can do is continue what we're doing and what you're doing and show the American people what is going on in this body and back it up with amendments in whatever bill is appropriate.

Mr. BARTLETT. Just one last question. There is a joke which almost never fails to bring a response in an audience, and that is you say the two biggest lies in America—the first one is "The check is in the mail," and the second one is "I'm from the Government and I'm here to help you."

Will the day come when someone says "I'm from the Government and I'm here to help you," that our citizens can say, "Gee, thanks. This is my problem. What can we do about it?"

Mr. DELAY. I hope so, and that, I think, is the goal of the majority in this Congress in what we're trying to do. We started out by keeping our promises, and we are keeping our promises, the promises of the Contract and the promises of a balanced budget. In that is regulatory reform, and we'll keep those promises, too.

Mr. BARTLETT. Thank you very much. Thank you, Madam Chairman.

Chairwoman MEYERS. Thank you very much, Mr. Delay. Mr. Peterson has said he does not have questions. Is that right?

So I think at this time we will go to the next panel and we appreciate very much your being here, and we do intend to fulfill the role of oversight, and we'll stay in touch with the Task Force.

Mr. DELAY. That's exciting news.

Chairwoman MEYERS. Our next panel is made up of distinguished people. First we will hear from Jeff Joseph, and he's vice president for domestic policy of the U.S. Chamber of Commerce. Jeff?

#### **TESTIMONY OF JEFF JOSEPH, VICE PRESIDENT, DOMESTIC POLICY, U.S. CHAMBER OF COMMERCE**

Mr. JOSEPH. Thank you, Madam Chairman. I'm pleased to have the opportunity to be here today.

The chamber counts among its membership 215,000 businesses, 3,000 State and local chambers and 1,200 trade and professional associations, as well as 72 American Chambers of Commerce abroad.

Let me add that two-thirds of our corporate members employ fewer than 10 people, 83 percent employ fewer than 25, and 91 per-

cent, in the aggregate, employ fewer than 50. So, the overwhelming membership of our organization is predominantly small business.

We're pleased to have this opportunity to represent the vast majority of our members that struggle daily with the burdens of Federal regulation. You and your committee are to be commended for the initiative that you begin today.

Two issues are at the center of the regulatory debate. First is Federal agency interaction with the private sector and the subsequent level of and need for the regulations and paperwork requirements imposed. Second is the standard of accountability to which agencies will be held.

Now, the current Federal regulatory model is quite clearly out of date. It's adversarial, legalistic, prescriptive and penalistic. It's a centralized, command and control system that imposes inflexible rules on an increasingly complex and diverse society, backed up by the threat of civil and criminal penalties.

The reason the chamber so steadfastly supports the regulatory reform efforts in Congress is because not only are regulatory burdens not being reduced, but they continue to grow. We recognize also that State and local Governments are out there adding to the burden.

President Clinton has issued a major Executive order in 1993 that's been alluded to and a number of subsequent directives which seem to restate parts of that order. As of today, we can find precious little evidence to suggest that Federal agencies actually are adhering to Executive Order 12866. Nor is there evidence suggesting the regulatory burdens are being reduced.

Given that the number of recent announcements are essentially a restatement of the Executive order, we have little faith that the agencies will take these directives any more seriously than they did in 1993.

Now, we continuously survey our members and recently asked them to respond concerning the regulatory burdens they face. Some of the findings were telling. Sixty-seven percent of the respondents said that Federal regulations required them to purchase additional equipment. Seventy percent had to modify their facilities. Seventy-two percent spend up to 25 hours each month filling out Government-required forms and complying with other recordkeeping and paperwork burdens.

Seventy-four percent reported that the cost of lost time spent completing paperwork was medium to high, and 61 percent said the costs associated with the purchase of additional equipment was medium to high. Those responses are especially enlightening, given that 65 percent of the respondents had 50 or fewer employees.

The moral of the story is that Executive orders and Presidential directives are not always effective. They can only be as good as the leadership at any given time. There's no accountability; nor is there any method of enforcement.

Moreover, we believe that this administration's regulatory reform efforts do little more than tinker around the edges. They don't address the need for fundamental changes in the process by which Federal regulations are created.

Now, one of the purposes of this hearing today is to look at how to grade agency performance in their rulemaking responsibilities,



developing a report card. This is another way of sounding the accountability theme.

We believe there are several smart starting points to move toward achieving this objective, and they're spelled out in our full statement on pages 9, 10, and 11. But in summary, if a final report card were to be issued today, we would gladly give the Congress very high remarks.

Certainly this Congress has done more to realize meaningful changes to the Federal regulatory system than has ever been achieved before. We would not be able to give the administration the same marks. Despite the great fanfare associated with the announcements of all the administration's regulatory initiatives back in 1993, despite the promises of the National Performance Review, the administration, at best, would receive an incomplete and, at worse, failing grades.

Congress must begin to make tough decisions about public policy choices, giving better guidance to Federal agencies on exactly what is expected and intended. Congress must also continue to exercise its oversight authority and begin to call Federal agencies on their shortcomings.

The regulated community also must begin to be a better participant in the process, voicing its views loud and clear, and taking part in helping Congress with its oversight functions.

Finally, Federal agencies themselves must be prepared to answer for both the intended and unintended consequences of their actions and their failure to follow the rules. It should no longer be acceptable that boilerplate language suffices for regulatory flexibility analysis or that paperwork mandates are issued without a valid control number.

Chairwoman Meyers, again, we're pleased to have had this opportunity to testify before you today. We look forward to working with you on this issue.

[Mr. Joseph's statement may be found in the appendix.]

Chairwoman MEYERS. Thank you very much for your testimony and we appreciate your being here with us today.

Our next witness is C. Boyden Gray, chairman of Citizens for a Sound Economy.

#### **TESTIMONY OF C. BOYDEN GRAY, CHAIRMAN, CITIZENS FOR A SOUND ECONOMY**

Mr. GRAY. Thank you, Chairwoman Meyers. You have my prepared statement, so I'm not going to go through it in any kind of detail, but just to summarize the most important points.

Obviously, regulatory reform and small business are synonymous. The key to the future of small business, which, in many ways, is also the key to the future of our entrepreneurial endeavors, is regulatory reform.

I think capital gains cuts could be an additional help, but I may have a bias, but I believe that regulatory intrusions and red tape are a bigger hurdle.

As you well know, small business is the engine of job growth. Small business is the engine of innovation. So, therefore, if you kill small business, you've killed the goose that lays the golden egg.

Now, you are looking here, as I understand it, for benchmarks. A couple of points I think I ought to make before I get into that.

One is that there is a tension between the small business community and the big business community. Republicans are often accused in the media of being the party of big business, but reg reform, if done properly, is really anti-big business. Let me just talk a little bit about rent-seeking, because I think that's at the heart of much of what you must do.

Rent-seeking is a term that I like because I'm a lawyer and I like to show that I'm an economist, or can be an economist. It has to do with people using regulatory structures for ulterior motives that have nothing usually to do with the end product of the regulation, which is a safe workplace or clean air, and it happens on so many different occasions where you have an industry against industry, a company against a company, a region against a region.

It became so commonplace when we were trying to monitor this in the Reagan-Bush years, that any time you saw big business come into your office or a big business trade association, you would say, as Dave Stockman often admonishes, "Hold onto your wallet."

They were always suspicious, and I say that representing, as I do now, a lot of big business. So, I don't mean it personally. I'm just saying that they come in and seek often things that will better their own future, and that may not be good for small business.

The plain fact is that for every regulatory burden that they can assume, it will fall disproportionately on their smaller competitor. So, therefore, it's not in their interest to fight it as hard as it should be, as it should be fought.

So you can't rely, I believe, on the big business community to do this. Unfortunately, the small business community can't afford—NFIB, the chamber—can't afford to come in and duke it out in the trenches with filings on a rulemaking the way big business can, so there does have to be some form of check, protection for small business, the worker, who is going to be employed primarily by small business, and the consumer.

I don't know of any other way to suggest to you to do it than just look at the constitutional structure and say that all three branches have to play a role. Obviously, the White House has to energize itself to do more than I believe this White House has done with this Executive order. I think the passage of H.R. 9 and S. 343 will be very, very important in this regard because it would provide a judicial back-stop, judicial review back-stop to make sure that it is implemented in cases where it might not be.

You must play a role, on a continuing basis. You follow on the heels of 40 years of committees exhorting the bureaucrats to do more and more and more and more. I hope it doesn't take 40 years to reverse that, but a lot of the pressure on the bureaucrats to do more has come from this body. So, therefore, your role, to hold oversight hearings on a continuing basis, to unravel what 40 years has built up, is absolutely indispensable.

So all three branches have to play a role. I don't think there's any magic silver bullet. I think the Institute for Regulatory Policy has got a good scorecard approach. I think you have to look at how many burden-hours are being cut under the Paperwork Reduction Act. I think you have to look at how many pages in the Federal



Register are cut. I think you have to look at how many dollars are, in fact, saved in a look-back process that would prune out old regulations. All these things are benchmarks that I think must be used. There isn't any one, single measure.

I would just like to conclude by trying to emphasize one particular point, a process. People talk about changing the culture. People talk about getting bureaucrats to behave more civilly and more sensibly and be helpful. I think a truly helpful, sensitive payroll-conscious bureaucrat is a contradiction in terms. I think if the bureaucrat were so sensitive as to be sensitive to payrolls, he would be making payrolls, not doing what he's doing.

Now, that's not meant as a personal comment. Most civil servants that I've dealt with are truly fine people. They just operate under very bad incentives.

So how do you change the incentives? I think the thing you must insist on is performance standards. Every time you have an oversight hearing, ask, "Is there a more flexible performance, non-command and control way to do this?" Invariably, there will be. If I had any advice to give you, it would be that.

Let me tell you a little anecdote. I had a lunch at the request of a official about 3 weeks ago. I won't identify who it was, but a very, very powerful official, one of the top most powerful in the regulatory bodies. This individual told me of a conversation with a reporter from a major newspaper. Again, I won't try to identify who it is. I'll try to hide who it is.

I just happened to ask, "Well, didn't you think that was a terrible article?" because the article happened to trash an effort that has been made to go to performance standards and market-based incentives. The article was trashing a very, very successful experiment in this. The article was saying that the reason why the experiment was a failure was that the cost of compliance had dropped so far, and therefore it must be a failure. This is bizarre reasoning.

The official said, "Yes, I spent quite a bit of time with that reporter and I couldn't talk him out of it and he kept saying to me, 'But you're giving away all the power.'" And I said, "Well, what did he mean by that?" He said, "You're giving away all the power to the private sector. Command and control—that's what it's all about. Why are you in this job?"

Now, therein lies, I think, all you need to know. The newspapers can't influence the public the way they can influence a bureaucracy to move the business community in the direction that they think, the reporter thinks is fair and right.

But that's not the way to do it. Command and control is not the way to do it. Performance standards are, I think, essential, and that's the only way to get rid of rent-seeking, where you have other segments of the business community seeking to take advantage of a regulatory framework, and it's the only way to get the inspectors out of people's businesses.

If they're being held to a performance standard, the inspectors won't be running around measuring the height of stair ladders.

So that's my advice. Keep on, people. It's a daily job. "The price of liberty is eternal vigilance," somebody said. There's no silver bullet. You've got to watch every step of the way, but please insist on

performance standards so that you can get rid of the enforcement people.

[Mr. Gray's statement may be found in the appendix.]

Chairwoman MEYERS. Thank you for your encouragement, Mr. Gray. We will hang in there.

Our next witness is Mike Baroody, and he is vice president of public affairs of the National Association of Manufacturers, and we're glad to have you with us again, Mr. Baroody.

### **TESTIMONY OF MIKE BAROODY, VICE PRESIDENT, PUBLIC AFFAIRS, NATIONAL ASSOCIATION OF MANUFACTURERS**

Mr. BAROODY. Thank you, Madam Chairman.

Members of the committee, I'm Mike Baroody and I serve as the vice president of public affairs of the National Association of Manufacturers. NAM is the Nation's oldest and largest broad-based industrial trade association. We have nearly 13,500 member companies and subsidiaries, and that includes, Madam Chairman, approximately 10,000 manufacturers who are, by any definition, including this committee's, small.

They're located in every State. Our members produce, among them, roughly 85 percent of U.S. manufactured goods.

I would like, at the beginning, simply to acknowledge that some progress has been made. The recent passage of the Paperwork Reduction Act is something we were quite pleased about and we think, with its passage, that some regulatory problems may abate.

I'd like to thank members of this committee and particularly you, Madam Chairman, and I know that Mr. Sisisky was here earlier; he's worked on this for a long time, as well—in your efforts over the years to reauthorize the Paperwork Reduction Act.

I'd also like to recognize and thank the administration for signing it into law.

The NAM has consistently maintained strong support for the central oversight functions of OIRA since its creation as part of the original Paperwork Reduction Act back in 1980, and I'd like to just make a few points. Some important points have already been made this morning. In the interest of time, I'll just try quickly to summarize a few points.

First, what's at stake? I don't have to tell this committee the impact regulation has on our ability to succeed as individual companies and to succeed globally in the global competition. In this day and age, global competition is more than a catch-phrase. It means that every added cost on the cost of production for any of our members cannot be passed forward. You don't compete in a global economy by raising prices.

What happens instead, unfortunately, is you pass those costs back, and that means fewer jobs or lower wages, or both.

We think, over the years, the NAM has done a pretty good job of aggregating these numbers in macro terms, if you will, but when I knew I had the opportunity to testify before this committee, I engaged in conversation a few of our members.

I think it's important, and it reinforces some of the skepticism expressed by others about the progress that's been made to date, the difference between words and performance so far.

I spoke to Ruth Stafford, a member of our board and the chief financial officer and director of Kiva Container Corporation in Phoenix, Arizona. She told me that it is still true what she told me 3 years ago; namely, that virtually every Sunday afternoon she does nothing but Federal paperwork.

We heard from another member, James Krimmel, president of Zaclon, Incorporated of Cleveland, Ohio, who reported that regulatory compliance costs to his firm are approximately half a million dollars annually and that exceeds Zaclon's roughly 2 percent of profit on \$15 million in sales in a good year by a substantial amount.

It reinforces in specific terms what we have learned over the years at the NAM, that there are years more often than not where the total cost of compliance with Federal regulations by America's manufacturers exceeds their pretax profits.

I spoke with Wally Kizling of St. Louis, who runs a 158-employee food equipment manufacturing facility, who used to dispose of a small amount of hazardous waste acids that he uses in his process by giving them to a plating company. The plating company could recycle those acids in its own production process at no cost.

However, new EPA regulations require the equipment manufacturer to obtain a pretreatment license, which costs \$35,000. Therefore, they've now stopped recycling the waste and instead, send it to a disposal company at the lesser cost of \$2,000 a year.

The NAM has long been supportive of legislative solutions and requirements for regulatory reform. We endorse the efforts of the past five administrations to improve the regulatory process as we join with others in endorsing the principles and the statements of intention from this administration, if not always applauding its performance.

It leads us to conclude, after 20 years and more now of experience with Executive orders administered by administrations of both parties, that it isn't any longer simply a question of getting it right, of finding what is the current way to make the Executive order process work, but perhaps of adding to it.

That is, in fact, why this House of Representatives passed H.R. 9 earlier this year and why we are hopeful and directly engaged in the process to secure passage of S. 343 in the Senate, because it adds to the statements of good intent and the sound principle about sound science, cost/benefit analysis and the rest, the all-important accountability measures that are necessary, we think, to make this process work.

I listened attentively to Miss Katzen in her earlier testimony. She said that, after describing their efforts, many of which are laudable, that "This is the right way to do regulatory reform." I'm afraid it is the wrong way to do regulatory reform if that means simply continuing efforts to make better the process that has been deficient in all of our experience over the last 20 years and more.

We need to make it different. The accountability measures that reside both in H.R. 9 and hopefully in a passed S. 343 allow first you, the Congress, to exercise disapproval if the regulators get it wrong, but most importantly to us, allow us, the regulated community, America's businesses, to go to court and seek redress against our Government if both the regulators and the Congress contrive



to allow to take effect a final rule that we think is in violation of those principles that now, I think, everyone is agreed to.

To cite the President I was privileged to serve, it is less a question of whether or not we trust Government and the regulators than that we adopt a dictum "Let us trust but verify." The accountability measures in the proposed legislation would allow us to verify.

Both Boyden Gray and Congressman DeLay have already alluded to the Institute for Regulatory Policies report card issued earlier this year. I think in it, there is much guidance this committee could take for devising criteria for evaluating the regulators on its own.

I would also endorse wholeheartedly the suggestion that this committee, in undertaking the oversight you plan to do, whether you do it comprehensively, across the board of regulatory agencies, or focus, for example, on one or two of the larger ones, they should be—the oversight, I would suggest, should be conducted precisely in terms of the principles in the Executive order.

Those principles are noncontroversial among the regulated community. We think they are good. The question is are they applied? Are they adhered to? Holding up OSHA, EPA, the other regulatory agencies to those standards in terms of performance would be, I think, a fine predicate for oversight conducted by this committee.

Allowing the regulated community to do the same through judicial review is exactly what we are pushing so hard for and what we think defines the essence of the opportunity that this Congress now has to enact meaningful regulatory reform for the first time in years. Thank you, Madam Chairman.

[Mr. Baroody's statement may be found in the appendix.]

Chairwoman MEYERS. Thank you very much, Mr. Baroody.

Our final witness today is Nye Stevens, director of Federal management and work force issues, and he has with him today Curtis Copeland, the assistant director of the General Accounting Office. You're going to get the last word here, I guess. Proceed, Mr. Stevens.

**TESTIMONY OF L. NYE STEVENS, DIRECTOR OF FEDERAL MANAGEMENT AND WORK FORCE ISSUES, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY CURTIS COPELAND, ASSISTANT DIRECTOR, GENERAL ACCOUNTING OFFICE**

Mr. STEVENS. I'll make it quite brisk, Madam Chairman. Mr. Copeland is the person who has done our work on compliance with the Regulatory Flexibility Act and with the National Performance Review recommendations on regulatory reform.

I'd like to just concentrate on your intention to give a report card on the administration, how one might go about doing this. One way, of course, would be to take each initiative and go through it one by one and determine whether it has been complied with, but ultimately, to us, this wouldn't be satisfactory because it ignores whether the underlying goals of the administration are being met and would focus more on the trees than the forest.

The two major cross-cutting goals that we identify in the administration's proposals are first, an attempt to reduce the regulatory burden on the American public and businesses, and second, an at-



tempt to change the agency's regulatory approach from a focus on compliance with detailed procedures to a focus on achieving outcomes.

Both of these raise measurement problems. In terms of the regulatory burden, I think to do this right you would need some both before and after measures, and there aren't very many dependable measures at the outset of the individual impact of particular regulations.

One of the ones that's frequently brought out in public forums is measuring regulations by their pages or the weight or the length that they would take up if stretched end to end, or even the budgets of regulatory agencies, the number of employees. Those are, at best, very poor proxies, I think, for a real measure of burden.

Another way that the regulatory burden has been measured is the total number of hours needed to fill out Federal paperwork. We also think that care must be taken in interpretation of these statistics even when they're not prepared by the regulated community.

For example, we reported in 1993 that the governmentwide burden-hour estimate had increased 261 percent between 1987 and 1992, from 1.8 billion hours to 6.6 billion. However, most of this, of course, was a change that the Treasury Department made involving a re-estimate of the amount of time dealing with tax forms and not a real change in the burden at all.

Another commonly used index is the cumulative cost of complying with the regulations. The data on this score also must be interpreted with caution. We pointed out that in 1995, estimates of the total regulatory cost imposed on the economy can really vary very substantially depending on the assumptions that you undertake.

There are some economists, for example, who feel that transfer costs, which are the costs consumers bear as a result of agriculture price supports, shouldn't be included in the regulatory burden at all, just as one example.

It's also the case that a number of businesses, when they assess the total they spend complying with regulations, really are including some things that they would be doing anyway. It's our view that a more meaningful measure would be the costs that a business incurs that are over and above what it would incur even in the absence of Federal regulations, because it does spend money for health and a safe workplace, even in the absence of Federal compulsion to do so.

The second measure is that focussing on outcomes, as opposed to processes. This is a very difficult thing to do. The Government, as a whole, is working on it through the Government Performance and Results Act, which does apply to regulatory agencies. We're finding that they're having some trouble doing that. They certainly have been quite frank about that. It's not an overnight change and I think the act itself allows agencies a good deal of time to come into compliance.

So in our view, the committee might very well focus on a couple of measures like that—outcomes and burden reduction. Another one possibly would be the amount of consultation that is undertaken with the business community. But whatever is chosen, I would urge the committee to think carefully about how the concept of regulatory burden and outcomes are defined and measured be-

fore using them to determine what particular initiatives the administration has undertaken are successful. Thank you.

[Mr. Stevens' statement may be found in the appendix.]

Chairwoman MEYERS. Thank you very much and I do think that while there is a certain tendency—there is definitely a tendency, I think, in any business community to present and reject any regulatory reform, I have a feeling that they are going to be fairly cooperative in the new climate, both by the administration and Congress.

I think they will want to say, "Yes, there has been some improvement" or "No, there hasn't been any improvement at all."

As opposed to some of the members who said early they hadn't felt any change at all, I do get some comment at home from business people who say, "Yes, it does seem to be changing a little. It's still terrible, so keep working." I mean, they just don't want us to let up.

But they say, "Yes, we do seem to notice a little change in the atmosphere." So I think we are having some success there.

To start the questioning, I'm going to turn to Mr. Peterson.

Mr. PETERSON. Thank you, Madam Chairman.

I appreciate the comments from the panel. It's excellent work and I think we're on the right end of the rope here. It seems like everyone's seemingly pulling on the same end of the rope.

In that regard, let me say that we might not all agree on everything, but the fact is that I think we ought to give everyone in the game here an E for effort. It sounds like there is, as Madam Chairman mentioned, a change in the climate, and it's improved.

But you know, at some point in time there was a departure in regulations from seeking a level playing field, which industries sought initially, that protected them and allowed California and Florida and New York and Washington to essentially have those places evenly matched in a competitive world; we made a departure. We went into consumer protection. We went into essentially protecting every micro identity out there, and the system got off course.

Everything was established based on a lowest common demonstrator instead of people assuming that there were 90 percent of the folks out there doing what was right, we challenged everybody and essentially made a rule that took care of the 10 percent instead of giving credit in the process.

It struck me that what we've done is much like we've done on a school bus, and some of you may not agree with this, but I think it's terrible the way we have kids jumping off school busses, and they think that they have no responsibility.

It just scares me to death. I stop for a school bus. The kids get off and don't look. They just assume that—their responsibility has been taken away from them—that the lights on the bus and the little flag out there and the driver are fully responsible for their safety.

Well, that's not the way it should be. We've taken away people's responsibility. We've taken away everything. We've got it all written down. Now every little detail is written down in a rule somewhere.

But what I see now is—and what struck me through your statements were some things, and I'll just run down them. Necessity. We're talking about a report card or some sort of measurement device. It has to be necessary.

The rules have to be flexible. One size doesn't fit all. The big guys, little guys, the rural, urban, the this, the that—they are all different.

We need to be innovative. We need to have an opportunity to use new ideas as we're working out there.

The accountability word was used, I think, by everyone in this discussion. Performance standards are absolutely on target. We have to do something to make, if you will, inducements. As opposed to pushing people, we ought to pull them through inducements.

Then the consultation aspects are every bit as important. We've got to get involved in bringing the people who are going to be regulated into the mix and help establish something they can live with. It's the payroll business. If you're making the payroll, if you're making those kinds of determinations, you're really the person who knows best what would work within your industry.

Then overall to reduce the burden. It's a terrible cost for a small businessman. I am a small businessman, I have a small computer company. The problems that are associated with the small businessman are not just related to compliance; it's the fear of not complying.

You end up worrying constantly that you're going to get caught on something you didn't know anything about. There isn't any small businessman in this entire country that can possibly go through the Federal Register and have any idea of what he's supposed to be complying with. It's a frightening adventure for someone who really wants to do it right, and that's most of the businessmen out there.

So we've got to reduce this burden. We've got to make this whole thing more accountable. We've got to have flexibility. We've got to do all those things that all of you are talking about, and I think we're on the same end of the rope.

I think with the leadership of Madam Chairman in this committee, we're in a position now to establish some marks on the road that maybe will take us to this point.

In fairness, you all may not agree with the administration's Executive order in every detail, but at least they're trying. They've missed the time line, and I'm not happy with that, either. But what's contained in this Executive order is pretty good.

I guess the problem here is that we're not taking it to legislation. We're not going to lock something in. Previous administrations have done the same thing.

So we need to continue what we're doing. I think we have a good opportunity. It would be good, I think, Madam Chairman, if we could walk out of this in some way, making the report card or the measurement devices into some form that will actually give some ultimate comfort to that small businessman that's out there, that person who we're representing here today.

So my questions are in the form of statements today, and I appreciate what you all are doing. I think that this is the time to do it. We've got a new mood, new atmosphere, as was said by Madam



Chairman, and we have an opportunity to make some changes that perhaps previously we never had. This might be a small window of opportunity and we need to take advantage of it. So, I appreciate the opportunity to speak to you all.

Chairwoman MEYERS. Thank you very much, Mr. Peterson. I might say that the vote is a 15-minute vote on the Schaefer amendment regarding the strategic petroleum reserve, followed by a 5-minute vote on the Chabot amendment.

Let me ask just a quick question or two because we don't have a lot of time here. Mr. Baroody, you mentioned that you were very engaged in following H.R. 9 or S. 343 in the Senate to make sure that it keeps moving along, and what is your—I'm going to ask you what is your sense of what's happening in the Senate? Are we going to see a regulatory package? And then I'll ask Mr. Joseph—I'm sure you're also probably pursuing that, and what is your sense of—are we going to get a regulatory package through both houses this year?

Mr. BAROODY. Madam Chairman, we're very optimistic. Obviously, we've worked very hard to make sure that the Members of the Senate, as was true in the House, heard, as I intended for this committee to hear, from individual members of the NAM, large and small, who believe very strongly that the rhetoric has not been matched with results and that not just 2 years into this administration but more than 20 years into experience with Executive orders, that the burden of excess regulation is their number one concern.

If it's not number one, it's in the top three for every one of our members. I say that without fear of contradiction.

So we have worked very hard to make sure that our members understood that they need to get that message to their elected representatives.

We are hopeful. It is very clear that this legislation engages enthusiasm on our part that it be passed and it engages equal emotion on the part of opponents, who have worked very hard to, I would say, to use really emotion and fear tactics to argue against what, at bottom, is legislation that simply does the following.

It requires that regulatory agencies use sound science, use better economic analysis, seek to impose the lowest cost when they must regulate, and when they cannot do so, to explain why not to Congress, which would have the opportunity to disapprove, and then to allow a judicial review regime to apply if we disagree finally.

It is a change in the process of regulation. It's not a change in the world.

To get to the specific answer to your question, there will be votes beginning early this afternoon in the Senate which will give us much more than my speculation about the prospects for real passage in the Senate. We, as I said, are quite optimistic that on both sides of the aisle in the Senate, there are people who have heard the message of frustration of American business and are ready to act to impose real regulatory reform.

Chairwoman MEYERS. Thank you very much, Mr. Baroody. Mr. Joseph?

Mr. JOSEPH. I support Mike's comments but also want to add I believe the bill that comes to the Senate, I don't believe it will be



as true a series of reforms as what the House has passed. The House bill is, I think, much better, and the challenge, of course, is going to be to try and come up with a conference product that, in fact, the public supports overwhelmingly, that there's no veto threat that can even be exercised.

We have at every member's place "A Campaign for a Regulatory Efficiency," a brochure and folder series that we've done heavy mailing to our membership about with the idea of trying to keep the grassroots stimulated and on top of this issue because once we get the bill through the Senate, who knows when conference will be, and with 1996 being a political year, this could go into a lull for a while.

We don't want to be Pollyannish about it. We think if we can keep the threshold levels high enough to keep this on the front burner and keep the members of the business community who are so exercised for all the good reasons on the backs of the Congress, we think we can get the right process to give us the right kind of bill.

Chairwoman MEYERS. Thank you very much. I would like to stay and ask some more questions but I know that you can't wait till we get back from voting, and it's been a long morning for all of you.

I want to say particularly thank you to Mr. Stevens. I think you really worked hard at trying to come up with some criteria for a report card for us. Your suggestions on performance standards were right on point.

Mr. Gray, we appreciate very much your participating and I'm sure we'll see you again at future meetings where we're trying to assess how much we've accomplished. Thank you very much.

[Whereupon, at 12:43 p.m., the hearing was adjourned, subject to the call of the chair.]

## APPENDIX

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**Statement of Congressman John E. Baldacci  
Small Business Committee  
Oversight Hearing on Administration Efforts to Reduce Regulatory Burdens  
on Small Businesses  
July 18, 1995**

Madame Chairman, I'm pleased the committee will have the opportunity today to review the Administration's efforts to reduce regulatory burdens on small business. I've been pleased with the President's efforts thus far, and I look forward to hearing the testimony today about the Administration's continuing efforts, as well as areas which may need further attention.

In speaking with my states' delegates to the White House Conference on Small Business, they've informed me of one clear and consistent theme in their dealings with other delegates: small businesses must be consulted before, during and after regulatory implementation to help determine the overall cost and impact of regulations. Cooperation between business and regulatory agencies is essential to the reform process. One example of this, I'm proud to note, is nationalization of the "Maine 200" program, which provides relief from inspections and fines to employers who work with their employees to create a safe workplace. By working in partnership with 200 of the most unsafe employers in Maine, OSHA was able to identify nearly 100,000 workplace hazards, more than half of which have been eliminated. As a result of these efforts, nearly 60% of the employers have reduced their injury and illness rate, workers' comp claims and insurance premiums.

I know through experience of the general bureaucratic nuisances that befuddle businesses in Maine, and throughout the Nation. I am well aware of the need to reduce paperwork requirements, eliminate duplicative procedures and address unnecessary government intrusion into small businesses. However, in our zeal to do so, we must be careful not to throw the baby out with the bathwater. Some proposals being talked about in Congress are extreme. They would adversely affect safeguards for workers, consumers and the environment. As we examine the Administration's, as well as Congressional proposals, we must do so with the object of balance in mind.

Again, I look forward to the testimony of Administration officials, as well as the NFIB, Chamber of Commerce, and other esteemed witnesses.

STATEMENT FOR CONGRESSMAN FLOYD H. FLAKE  
BEFORE THE COMMITTEE ON SMALL BUSINESS  
JULY 17, 1995

GOOD MORNING MADAM CHAIRMAN MEYERS AND MEMBERS OF THE SMALL BUSINESS COMMITTEE. I WANT TO COMMEND YOU CHAIRMAN MEYERS FOR HOLDING THIS OVERSIGHT HEARING. I WELCOME THE OPPORTUNITY TO JOIN IN THE DISCUSSION ON THE CLINTON ADMINISTRATION'S INITIATIVES TO REDUCE REGULATORY BURDENS ON SMALL BUSINESSES.

MADAM CHAIRMAN, SMALL BUSINESS OWNERS PLAY A VALUABLE ROLE IN THE U.S. ECONOMY. TO THAT END, THESE HARDWORKING ENTREPRENEURS PROVIDE THE MAJORITY OF EMPLOYMENT OPPORTUNITIES TO THE AMERICAN PEOPLE. FOR THESE REASONS MADAM CHAIRMAN, IT IS INCUMBENT ON THE CONGRESS TO PROVIDE AN ENVIRONMENT THAT PROMOTES THE GROWTH OF SMALL BUSINESSES.

MADAM CHAIRMAN, I HOPE THAT THE PROPOSALS OUTLINED BY THE ADMINISTRATION WILL INDEED LESSEN THE REGULATORY HANDLES ON THE SMALL BUSINESS COMMUNITY. MOREOVER, I WILL PAY ESPECIALLY CLOSE ATTENTION TO HOW EFFECTIVE THESE PLANS ARE IN THE QUEST TO REDUCE RESTRICTIONS ON SMALL BUSINESSES.

MADAM CHAIRMAN, I WANT TO ONCE AGAIN THANK YOU FOR HOLDING THIS IMPORTANT OVERSIGHT HEARING. I AM DELIGHTED TO BE ABLE TO



PARTICIPATE IN THE DISCUSSION OF MATTERS THAT ARE VITAL TO PROMOTING  
SMALL BUSINESS OWNERS.

STATEMENT OF THE HONORABLE DON MANZULLO  
BEFORE THE HOUSE SMALL BUSINESS COMMITTEE  
ON REDUCING REGULATORY BURDENS ON SMALL  
BUSINESS

JULY 18, 1995

10:00 AM IN ROOM 2359 RHOB

Madam Chair, I applaud your efforts to hold oversight hearings today on this timely topic. We've heard many statements from the Clinton Administration proposing various internal initiatives to reduce regulatory burdens. Yet, after the press conference was over, there is little follow-up by the media to see if in fact the Administration carried out all its good intentions.

For example, in President Clinton's March 4, 1995 memo to all agency and department heads, he directed them to compile a list of regulations that could be eliminated or modified for each agency be forwarded to him for review by June 1, 1995.

As of today, there is no evidence that this list has ever been written (not even submitted!) to the President for his review.

Regardless, there is very little evidence that the federal agencies adhere to President Clinton's 1993 executive order on regulatory planning and review (E.O. 12866). Noting that the President's 1995 announcement is not that much different than E.O. 12866, it is doubtful that the agencies will take these "new" instructions seriously.

I endorse your idea, Madam Chair, of having a report card to see how the Administration is complying with its own rhetoric. In addition, I call upon the Administration to work with this Congress to reduce some of the most onerous statutory regulations by withdrawing its "all or nothing" veto approach to the various regulatory reform bills moving through Congress.

In fact, the President's March directive also calls on agencies to identify those burdensome regulations that require legislative action. One of the most silly rules has to be the Clean Air Act's Employee Commute Option (ECO), which mandates that all companies in "severe" ozone attainment areas that employ over 100 people must find alternative means of transportation for 25 percent of its employees. I represent McHenry County, which is a rural county included in the Chicago Metropolitan statistical area, that has no internal public transportation. This mandate is a de facto forced carpooling requirement. This is a ridiculous requirement that will do little to reduce air pollution in my district but only adds paperwork and headaches to my constituents. One of the first steps this Administration can do is to endorse my bill, HR 325, to truly make the ECO a voluntary option that does not alter the requirement to reduce air pollution in particular regions.



I look forward to the testimony of the witnesses here this morning on ways to reduce the regulatory impact on small businesses. Thank you, Madam Chairwoman.

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**Opening Statement of the Honorable Marty Meehan**  
**Small Business Committee Hearing on Regulatory Reduction Efforts**  
**July 18, 1995**

Thank you for yielding, Madam Chairwoman. Good morning. I welcome the opportunity to hear from our panelists today, and I would especially like to extend my thanks to Sally Katzen for participating.

According to a study conducted by the Manufacturing Task Force of the Northeast-Midwest Coalition, 54% of chief executive officers ranked increasing regulatory burden as the number one factor leading to the decline in manufacturing jobs. As co-chair of the Task Force, I have been working this Congress to make sure that the federal regulatory system does not continue to undermine the manufacturing sector -- our greatest source of high skilled, high wage jobs.

In 1993, Manufacturing Task Force held a field hearing on regulatory issues in Trenton, New Jersey. The results were astonishing. Overlapping federal, state and local regulations were also creating serious obstacles for small businesses.

Small businesses and manufacturers are among the greatest contributors to our nations' economy. While there is no question that regulation is essential to protect public health and safety, this well intended system has grown out of touch with the legitimate concerns of the regulated community.

I look forward to hearing the panels' reports today. Working together with small businesses, I think that Congress and the Administration can significantly streamline federal regulations without jeopardizing public health and safety.

**Jan Meyers**  
**Chair, House Small Business Committee**

**Opening Statement for**  
**Oversight Hearing on the Administration's Initiatives to**  
**Reduce Regulatory Burdens on Small Businesses**

**July 18, 1995**

**Good Morning. Today the Small Business Committee will hold a hearing on the Administration's initiatives to reduce regulatory burdens on small businesses.**

**I anticipate this hearing will be one of a continuing series of oversight hearings on what is actually happening to reduce paperwork and regulatory burdens upon small businesses. My intent is that these hearings will provide the basis for the Committee to develop a report card a year from now on whether initiatives to reduce the regulatory burdens on small businesses are working.**

**The innovations and trends developing among the exploding number of small businesses in our country today are paving the way for how the 21st century will be for the young people of today. Small business presents a dynamic and vital perspective for the future. We know that small business is the economic engine which will drive us into that future. I believe a critical component of this Committee's mission is to serve as an active forum for the small business perspective. Big businesses and small businesses for example,**

do not always share the same views. And large corporations are always better equipped to present their case.

An early lesson I am learning in this Chairmanship is how much of the Committee's role is dedicated to being a "Watchdog" and "Advocate" for the small business community. While Congressional oversight may not attract the press interest other legislative activities do, I intend to make oversight a hallmark activity of the Small Business Committee. I am pleased to say that our Subcommittees are already deeply imbued with this spirit. It is critical work which will contribute to revitalizing our mission as a forum for small businesses.

I also want to highlight another feature of this morning's hearing which I intend to become a practice for the Committee's oversight activities. Representatives of the small business community will join in a panel with a spokesperson from the Administration. I believe this will better enable a meaningful dialogue between this Committee, the Administration, and the small business community. There is much common ground and common sense in this approach. I appreciate the Administration's and Administrator Katzen's willingness to participate in this kind of forum.

Last month's White House Conference on Small Business revealed that the concern with excessive government regulations rank with concerns with the tax structure and access to capital among small businesses. While small business is the American dream, government regulations too frequently operate as barriers to ingenuity, growth, and most importantly, the entrepreneurial spirit of the individual



American men and women who make up the small business community.

A consensus exists that the cumulative burden, the aggregate cost of complying with government regulations is too much. Dollar estimates this Committee has heard range from 510 billion dollars in paperwork costs alone to over a trillion dollars in overall regulatory costs. However configured, the number is huge. These costs are "off-budget". They do not show up in the budget or appropriation process. They amount to hidden taxes. Because of the nature of small business, they impact the small business community disproportionately.

At the White House Conference President Clinton spoke eloquently on his initiatives to reduce the regulatory burdens on small business. He and the Vice President, who also addressed the Conference, referred to the President's March 1, 1995 Memorandum to Department and Agency heads to make regulatory reform a priority. Agency Heads were to read all their regulations page by page and indicate to him by June 1st which regulations they would eliminate and which they would modify. They were to note the ones which needed legislative attention in this reinvention exercise.

In the 104th Congress, the Contract with America has already led to passing "unfunded mandates" legislation, which goes into effect next January, and the Paperwork Reduction Act of 1995, which amends existing law and begins next October 1st. Additional reforms mandating improvements in cost benefit analysis, risk assessment, protection of property rights, Congressional review, and

regulatory flexibility for small businesses in promulgating and reviewing regulations await legislative enactment.

Clearly, there are a number of changes taking place now and anticipated in the near future that offer the promise of eliminating the excesses of regulations and paperwork. And as the President duly noted at the Conference, it is important that the small business community be a part of the dialogue, a participant in the changes which are intended to eliminate barriers.

It is time as well to begin the oversight process. With all the emphasis on changes, what is actually happening becomes a compelling question. For today's hearing, I asked the Administration to provide a progress report on implementing the President's directives and to participate in this morning's panel. Sally Katzen, the Administrator of OIRA, and the President's regulatory "traffic cop", is here with us. Jere Glover, the Chief Counsel for Advocacy, the "pit bull" for small businesses, is also here. I have asked him, our small business representatives, and expert witnesses with us this morning from the General Accounting Office and elsewhere to think about what are the right questions to ask now, and six months from now, to evaluate whether regulatory burdens faced by small businesses are actually being reduced.

Congressman Tom Delay, the Majority Whip, will also join us this morning. Congressman Delay Chairs the Speaker's Task Force on Regulatory Reform. He is and has been at the point in the movement for regulatory reforms. His experience as a small businessman is a key reason for why he has made the impact of federal regulations on small business the focus of his leadership in this arena. He brings

valuable insights to our Committee and will share his views on the role Congressional oversight activities must play.

A year from now I envision the Committee issuing a Report Card on how well the initiatives undertaken to reduce regulatory burdens are working. The Committee also plans a Report Card regarding implementation of the overall recommendations of the White House Conference on Small business. My thinking is that the Report Card on Regulatory and Paperwork Reduction can be an integral part of a Report Card on the Conference. In both cases, it will be important that the small business community itself be involved in the grading.

**Committee on Small Business  
United States House of Representatives**

**July 18, 1995**

**Testimony of Representative Glenn Poshard**

Madam Chairman, I want to thank you for providing us with the opportunity today to examine the Administration's efforts to reduce regulatory burden on small businesses. For too long, burdensome regulations have plagued small businesses and their opportunity to grow and prosper. As many communities, especially those in rural areas, look to the small business community to create jobs and drive local economies, our government has a responsibility to promote and foster small business.

Back in my congressional district in the state of Illinois, I have seen a number of small businesses close because they were unable to comply with government regulations. Have our communities, our workers and our consumers truly benefitted from all of this regulating, when in the end, job loss and economic distress have outweighed the benefits of regulating? It is crucial that government and the small business community work together to find common-sense approaches to regulating small business. By forming a partnership with the small business community, I believe we can better meet the needs of small business owners and operators while at the same time addressing the goals of those in Washington.

Thank you again Madam Chairman for holding this very important hearing, one that I believe will lead to further efforts by Congress and the Administration to find balanced and sensible approaches to regulating American small businesses. I would also like to thank Congressman DeLay, members of the Administration, and representatives from the small business community for appearing before the Committee today. I appreciate and applaud your commitment to regulatory reform especially as it relates to the future of small business in America.





TESTIMONY OF  
MICHAEL E. BAROODY  
VICE PRESIDENT, PUBLIC AFFAIRS  
NATIONAL ASSOCIATION OF MANUFACTURERS

Before the  
COMMITTEE ON SMALL BUSINESS  
U.S. HOUSE OF REPRESENTATIVES  
on  
OVERSIGHT OF ADMINISTRATION REGULATORY POLICY  
JULY 18, 1995



## *Manufacturing: The Key to Economic Growth*

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- ✓ U.S. manufacturing's direct share of the Gross Domestic Product (GDP) has averaged more than 21 percent since World War II. And nearly half of economic activity depends indirectly on manufacturing.
- ✓ U.S. manufacturing productivity growth averaged 3 percent during the 1980s compared with almost zero growth in the rest of the U.S. economy.
- ✓ U.S. manufacturing exports have been the *single main source of strength* in the current economy — contributing 30 percent to 40 percent of the nation's economic growth since 1987.
- ✓ Each \$1 billion of exports creates 20,000 new jobs. Since 1985, exports have saved 4 million jobs in U.S. communities.
- ✓ Manufacturing jobs on average pay 15 percent more than jobs elsewhere in the economy.
- ✓ Manufacturing provides the bulk of technological advances and innovation for the economy.

**EXECUTIVE SUMMARY**

After more than 20 years of effort by presidents of both parties to control regulatory excesses through executive orders, the regulatory burden remains a major problem. The NAM believes that legislation must be passed to hold agencies accountable through judicial review before this problem can be mitigated. Unfortunately, the executive order process has not been effective enough in regulating the regulators.

TESTIMONY OF  
MICHAEL E. BAROODY  
VICE PRESIDENT, PUBLIC AFFAIRS  
NATIONAL ASSOCIATION OF MANUFACTURERS

Before the  
COMMITTEE ON SMALL BUSINESS  
U.S. HOUSE OF REPRESENTATIVES

on  
OVERSIGHT OF ADMINISTRATION REGULATORY POLICY

JULY 18, 1995

Madam Chairman, members of the committee, I am Michael Baroody and I serve as the vice president for public affairs of the National Association of Manufacturers (NAM). The NAM is the nation's oldest and largest broad-based industrial trade association. Its nearly 13,500 member companies and subsidiaries, including approximately 10,000 small manufacturers, are located in every state and produce roughly 85 percent of U.S. manufactured goods. Through its member companies and affiliated associations, the NAM represents every industrial sector, 185,000 businesses and more than 18 million employees.

On behalf of the NAM, I am pleased to offer this testimony regarding the efforts of the Clinton Administration to reduce the regulatory burden on small business. Between the 1992 election and President Clinton's inauguration, the NAM worked with members of the transition staff on fashioning a reasonable successor to Executive Orders 12291 and 12498, both of which President Reagan issued in an attempt to rein in the regulatory agencies.



The NAM was pleased with many of the principles and procedures outlined in the resulting Executive Order 12866, along with the memorandum to agency heads issued on March 4, 1995. These documents represent an intention of the Administration to ease the regulatory burden while increasing compliance. Unfortunately, as with many good intentions, the NAM does not believe that the Administration's efforts have been realized.

Listening to our members, we hear that the proverbial regulatory beast continues to be insatiable in its hunger for paperwork and regulatory requirements. For example,

- Ruth Stafford, chief financial officer and director, Kiva Container Corporation, in Phoenix, Arizona, reports that even today she spends her Sundays doing nothing but federal paperwork.
- In a statement before the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs of the House Committee on Government Reform and Oversight in January of this year, James Krimmel, president of Zaclon, Incorporated, of Cleveland, Ohio, reported that regulatory compliance costs to his firm are approximately one-half million dollars annually. Zaclon earns about two percent on fifteen million dollars in sales and employs 59 workers.

- A 158-employee food equipment manufacturer formerly disposed of a small amount of hazardous waste acids it produced by giving them to a plating company. The plating company recycled the waste acids in its production process at no cost. However, new EPA regulations would require the equipment manufacturer to obtain a pretreatment license (cost: \$35,000). Therefore, they now stop having the waste acids recycled and instead send the waste to a disposal company (\$2,000/year).
- OSHA handed out a \$1,000 fine to Power Engineering & Manufacturing in Waterloo, IA simply because it had failed to total the columns on its OSHA 200 log.

The NAM has long been supportive of legislative solutions and requirements for regulatory reform, while endorsing the efforts of the past five administrations to improve the regulatory process. The NAM was disappointed, for example, that the Reagan Administration did not seek to anchor either Executive Order 12291 or 12498 into statute. Similarly, the association is dismayed by the Clinton Administration's opposition to many of the regulatory reform initiatives currently before Congress and its contention that bureaucratic problems can be resolved administratively. History, unfortunately, demonstrates that they cannot.

After 20 years of executive orders issued by presidents of both parties, regulatory burden remains one of the greatest problems faced by business and the citizenry at large. The principal reason have failed to effect change centers on the fact that agencies are not held accountable for implementing the principles embodied in executive orders. There is little accountability to affected entities outside of the federal government. A legislative solution must allow for congressional review of proposed regulations as well as judicial review of final rules. Congress already retains, of course, the right to overturn misinterpretations of statutes or regulations that do not conform with congressional intent. But this requires compliance in the meantime as there is no authority to suspend enforcement or issue a stay unless this is done by the agency itself.

As I indicated, the NAM was pleased with many of the provisions of E.O. 12866. Specifically, these include the requirement that only "necessary" regulations should be promulgated; the exercise of "flexibility" and "innovation" in implementation; the periodic review of existing regulations; risk analysis; and the creation of regulatory policy officers for each agency. But, the NAM had concerns about other provisions, such as the ten-day window for the Office of Information and Regulatory Affairs (OIRA) to veto an agency decision that a regulation is not "significant," the ambiguity about whether policy and guidance documents are included, and the lack of a definition for "distributive impacts" and "equity" in performing cost-benefit analysis. But, again, the lack of accountability and the ability of experienced civil servants whose careers have been spent on issuing and enforcing regulatory requirements have served to undermine the stated objectives of the executive

order. The structure of E.O. 12866 has left little room for private parties to question agency and OIRA interpretation of many of these terms and their analyses.

In a demonstration of how any administration will tend to put the best light on its implementation of policies, last year in its report on the first year of E.O. 12866, OIRA proudly proclaimed that the fact it did not challenge any agency on a regulatory decision showed that E.O. 12866 was a success. In a memorandum regarding the Regulatory Reinvention Initiative issued on March 4, 1995, however, the President noted that "not all agencies have taken the steps necessary to implement regulatory reform" and indicated his desire to "reaffirm and implement the principles of Executive Order No. 12866." While the NAM applauds the President for taking steps to reiterate his commitment for reform, at the same time it is troublesome that OIRA has not had any formal disagreement with agencies on implementation of E.O. 12866.

Surely, some agency must have attempted to issue a regulation that either was not "necessary" or rigged cost figures so that a proposal came in under the \$100 million threshold and therefore was not reported as "significant." Similarly, the interpretations of "risk analysis" and "sound science" are questionable. On page 8 of its "Reinventing Environmental Regulation" initiative, the Administration notes that "EPA must remain at the cutting edge of risk assessment and independent peer review of the science used in regulatory decisions to mitigate risk in the most efficient and effective manner possible." While the goal enunciated in this statement is laudable, there is a consensus among science



professionals that the EPA uses science selectively to further its aims rather than as an objective analytical tool. This was the reason the House overwhelmingly passed H.R. 1022, the Risk Assessment and Cost-Benefit Act of 1995, and why the Senate is now considering S. 343, the Comprehensive Regulatory Reform Act of 1995.

In April of this year, the Institute for Regulatory Policy, which is a division of Federal Focus, Inc., issued its first report on "Ensuring Accountability for Developing Well-Founded Federal Regulation: An Initial 'Report Card' on Compliance with Key Directives of the Regulatory Executive Order (E.O. 12866)." This "report card" centered on EPA compliance and the Institute indicated its intention to issue further reports dealing with compliance by other agencies.

The findings of the report card are somewhat shocking, demonstrating the number of regulations just by EPA that escaped scrutiny by OIRA. One is left to wonder how many other regulations issued by other agencies also managed to be promulgated without sufficient questioning. Of 222 EPA substantive rulemaking notices printed in the *Federal Register* (those dealing with administrative or other "routine" *Federal Register* notices were excluded), only 6 determined that there was a "compelling need" for regulating, and only 6 justified the costs. In addition, even with 45 rules meeting E.O. 12866's definition of significant, just 14 were evaluated for alternative approaches and of these, 8 "indicated that the most cost-effective or least burdensome approach was adopted." According to the analysis, OIRA reviewed 45 regulations deemed significant by EPA and of these,

- 3 contained a determination of 'compelling public need' (out of the 29 not 'required by law')
- 6 contained a determination that the benefits justified the costs (out of the 29 not 'required by law')
- 9 considered alternative approaches to regulating, and 6 of those stated that they had selected the most cost-effective or least burdensome alternative.

"Report Card", Institute for Regulatory Policy, April 1995, page 9.

Despite the obvious non-compliance, OIRA did not challenge EPA on any of these rules. This is an example of how the lack of accountability hinders the effective implementation of executive orders. The basic problem lies with the agencies and not OIRA. While the executive orders have given OIRA the role of "watchdog," regulations should already be in conformance by the time the agency head sends the proposal to OIRA. Agency heads currently can rely, however, on the fact that so long as the regulation is in compliance with the minimal public protections of the Paperwork Reduction Act, neither the agency nor individual agency employees need worry about any level of enforcement higher than OIRA sending the proposal back.

This is not to say that OIRA should be left off the hook. The "watchdog" is only accountable to itself. But, the fact that so many regulations passed OIRA's scrutiny with no consequences is once again, a call for legislative action and judicial overview.

The Administration chose EPA to implement the first specific "Reinventing Government" directive. The stated purpose of the Reinventing Environmental Regulation initiative, announced on March 16, 1995, is to ease the burden on regulated entities, especially smaller businesses and governments. Its overall themes are in agreement with NAM regulatory goals: better prioritization of risks in order to target those that are most threatening, and decreasing bureaucratic hurdles while promoting voluntary compliance.

Reinventing Environmental Regulation contains many worthwhile reforms, such as expansion of market trading rights beyond emissions, as well as the introduction of "one-stop" permitting and emission reports. It also adopts regulatory policies long advocated by the NAM; specifically, increasing the emphasis on voluntary compliance and increasing assistance to small businesses wishing to comply with environmental rules without being cited.

The initiative also seeks a 25 percent reduction in paperwork burden. What concerns the NAM, however, is that the agency is allowed to do this through increased electronic reporting. This may decrease paper, but does not take into account the amount of time necessary to compile required information. In most cases, as with taxes (with which every American is familiar), it is not the difficulty in checking or filling in the box that is burdensome, it the time and effort in getting the information.

The centerpiece of the initiative is Project XL. ("XL" is a reference to excellence and leadership.) Under Project XL, EPA, "[i]n partnership with the states," will allow a "limited" number of "responsible" companies "to replace the requirements of the current system at specific facilities with an alternative strategy" devised by the various selected companies as long as certain conditions are met. Specifically, these are: (a) the alternative must result in environmental performance over and above the current applicable regulations; (b) "citizens" must be allowed to "examine [the alternative's] assumptions and track progress"; (c) the alternative must not cause "worker safety or environmental justice



problems"; (d) there must be community support; and (e) "the alternative strategy must be enforceable." The second criterion will likely be the biggest impediment to Project XL's success as companies understandably will be hesitant to grant certain groups access to internal documents due to proprietary concerns. It will be interesting to learn what EPA will require for public inspection.

With the recent passage of the Paperwork Reduction Act of 1995 (PRA), some of the regulatory problems may abate. If I may digress, I would like to take the time to recognize the important role that this committee and its predecessors -- in particular you, madam chairman, and Representative Norman Sisisky -- has played in the efforts over the years to reauthorize the PRA. I would also like to recognize and thank the Administration for its active support in ensuring that this important legislation be one of the first acts of the 104th Congress to be signed into law.

The NAM consistently maintained its strong support for the central oversight functions of OIRA since its creation as part of the original PRA of 1980. The PRA of 1995 overturns the 1990 Supreme Court decision in *Dole v. United Steelworkers*, establishes a burden reduction goal of ten percent for the first year and five percent for each of the four years thereafter (including statutorily expanding the definition of "burden" to include "time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency"), and enhances the OMB control number requirement. Lest I be remiss, madam chairman, I would also like to acknowledge the

significance of your amendment for federal agencies to indicate explicitly how long records must be kept in eradicating confusion and uncertainty by records managers. Given the NAM's firm position on OIRA's authority and duty to act as overseer on behalf of the President and the White House, the association hopes that OIRA will use its new powers effectively. In particular, agencies must be chastised that they cannot meet the regulatory burden goal merely by moving to electronic filing. I trust that this committee will be an important ally on this point.

One unfinished piece of legislative business that is very important to NAM's smaller members is effective judicial enforcement of the Regulatory Flexibility Act (RFA). The House has already passed this legislation in the form of Title I of the Regulatory Reform and Relief Act (H.R. 926), and Title VI of the Job Creation and Wage Enhancement Act (H.R. 9). As you know, madam chairman, the RFA is one of the laws most flouted by agency rule writers precisely because currently there is no effective penalty. The chairman of the Senate Committee on Small Business, Kit Bond, is trying to get similar legislation through the Senate. Unfortunately, the Administration has clung to the belief that effective judicial review is neither necessary nor desirable. Instead, it has offered and pushed for an alternative that is judicial review in name only.

In conclusion, the NAM looks forward to continuing to work both with this and other appropriate congressional committees, as well as with OIRA in general and Administrator Katzen in particular, to ease the regulatory burden on small business.'

REGULATORY OVERSIGHT HEARING  
SMALL BUSINESS COMMITTEE  
CONGRESSMAN TOM DeLAY  
July 18, 1995

Madame Chairwoman, I am very pleased to have been asked to testify on this vital issue of regulatory oversight. For too long, the legislative branch abdicated its responsibility for overseeing the regulatory activities of the executive branch, to the point that one could argue that a fourth branch of government was created -- the regulatory bureaucracy. Moreover, regulations impact the small businesses of America in a way that is disproportionate to that felt by larger businesses, and I commend this committee for focusing on this aspect of the regulatory burden.

A typical American business must fulfill provisions of the Clean Air and Water Acts, provide a minimum standard of living for workers, engage in recycling, carry an expensive insurance policy against product liability, ferret out illegal aliens, provide costly packages of medical benefits to employees, provide special accommodations to disabled employees and promote equal opportunity as determined by race, sex, and age.

As a perfect example, an article in yesterday's *Washington Post* described in great detail the multi-layered stacks of paperwork requirements that Drypers Corp, a small paper diaper company based in Houston, must navigate through on a daily basis. Besides the incredible number of hours, money, and effort spent filling out and complying with these requirements, an even bigger problem for Drypers is that these regulations have a worse effect on its profit, proportionately, than on that of its larger competitors.

The inverse relationship between the size of the regulatory burden on small businesses and the number of jobs small businesses are able to create is well understood. In light of this fact, it is truly unfortunate that small business owners spend at least a billion hours a year filling out government forms, at an annual cost of \$100 billion, according to the Small Business Administration.

In response to the American people's cries for relief, the 104th Congress has made one of its priorities be to reduce the burden of federal overregulation, bring sound science and common sense into the process, and then ensure that agencies are complying with these standards. So far, the House has passed unfunded mandates reform, the Paperwork Reduction Act, risk assessment and cost/benefit analysis requirements, and an improved Reg Flex Act, among other reforms. Two of these -- unfunded mandates and paperwork reduction -- have even been signed into law. Having these laws in place and actually seeing results are two very different things, however.

Since he came into office, President Clinton has repeatedly expressed a desire to reform the regulatory system. In September 1993, he introduced an executive order which established a revamped regulatory review process.

Just last March, he issued a memorandum to all executive departments and agencies asking them to cut obsolete regulations, reduce red tape, work with the grassroots, and negotiate instead of dictate. As part of cutting obsolete regulations, the president asked his department and agency heads for a list of regulations that should be eliminated or modified, whether by administrative or legislative action, to be delivered to him by June 1.

Now, actions speak a lot louder than words. As far as I know, no such comprehensive list has been delivered to the President, and it certainly has not been made public. I would love to see that list so that our congressional committees could consult with the executive branch as they work to identify needless regulations to place on the Corrections Calendar.

Further, despite his seemingly good intentions, there is little evidence that any reduction in the regulatory burden is taking place. In fact, the opposite is true. The number of regulatory bureaucrats is increasing, the number of pages in the Federal Register is higher each year, and excessive and unnecessary rules continue to be promulgated by agencies. Costly rulemakings have been proposed on indoor air, chlorine, ergonomics, and emissions testing, among other areas.

In the process of promulgating regulations, departments are clearly not complying with the guidelines set by their own president. A study was conducted recently by the Institute for Regulatory Policy on all EPA proposed and final rules published in the Federal Register during the second six months after Clinton's executive order took effect. It found that out of 222 substantive rulemakings, only 6 offered a determination that there was a "compelling public need" for regulation, and only another 6 rulemakings demonstrated that the benefits justified the costs of the regulation.

Rather than laying all of the blame on the executive branch, however, I would contend that the legislative branch for many years didn't do everything it should, either. Agencies have been legislating through regulation, and past Congresses did little to stop them. This Congress is different, however. This Committee hearing is a prime example of what is occurring regularly so that there is a constant dialogue between the two branches and Congress can assert its proper role of oversight. In this case, we should ask why the agencies aren't complying with the President's executive order, and if they are fulfilling the requirements of the Paperwork Reduction Act. And the departments and agencies should be prepared to respond.

Again, small businesses are the job creating engines of the U.S. economy, and we should be doing everything we can to reduce the burden of excessive regulation. I hope the executive branch will bear this in mind as it promulgates regulations in the future, and I thank the Committee for listening to my testimony.





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**Statement of**

**John P. Galles  
NSBU President**

**Before the  
House Committee on Small Business**

**Regarding  
Small Business Regulatory Reform**

**On Behalf of  
National Small Business United**

**July 18, 1995**

**Madame Chairman and Members of the Committee:**

Thank you for the opportunity to share our views regarding the need for reducing the regulatory burden. I am John Galles, President of National Small Business United. National Small Business United has long been a proponent of the need for a reduced regulatory burden on small businesses. Chairman Meyers, you have been particularly helpful in moving forward a new Paperwork Reduction Act (now law) and a strengthened Regulatory Flexibility Act. But using these important tools will ultimately be up to the executive branch.

National Small Business United represents over 65,000 small businesses in all fifty states. Our association works with elected and administrative officials in Washington to improve the economic climate for small business growth and expansion. We have always worked on a bi-partisan and pro-active basis. In addition to individual small business owners, the membership of our association includes local, state, and regional small business associations across the country.

### ***The Small Business Regulatory Burden***

Every year, NSBU conducts a survey of the small business community to assess its attitudes, concerns, and needs. We always ask business owners to

identify the "most significant challenges" to their business' growth and survival. Some issues come and go from the top ranks, but "regulatory burdens" is consistently one of the top three challenges. There is a serious message here which must be addressed. Congress is currently at work on a package to reform the regulatory process which NSBU believes, taken together, will finally begin to address these problems. Together, reform of the Regulatory Flexibility Act, the Paperwork Reduction Act, CBO analysis of private sector mandates, a regulatory budget, and appropriate risk assessment, can form a regulatory "safety net".

By their very nature, unnecessary federal regulation and paperwork burdens discriminate against small businesses. Without large staffs of accountants, benefits coordinators, attorneys, or personnel administrators, small businesses are often at a loss to implement or even keep up with the overwhelming paperwork demands of the federal government. Big corporations have already built these staffs into their operations and can often absorb a new requirement that could be very costly and expensive for a small business owner.

What Congress was finally able to understand--at least temporarily--when it passed the 1980 Paperwork Reduction and Regulatory Flexibility Acts, was that large and small businesses operate in fundamentally different ways; that federal regulations which may in isolation seem perfectly reasonable, especially for a larger firm, may be completely unworkable for a small company. Many small business owners deal with federal requirements personally (when they are even aware of them), and this represents time that cannot be spent on

marketing, servicing customers, or making a better product. In other words, this time is incredibly valuable, and small business owners would simply like to ask that the information and paperwork they must produce be deemed truly necessary before they are forced to deal with it.

Most federal officials who develop and promulgate regulations are largely unaware of the many activities and requirements of their fellow agencies. Information could be combined, and redundancies could be eliminated. In order to accomplish this goal, however, it is absolutely necessary that there be a centralized authority to examine the overall regulatory scheme of the federal government.

### ***The President's Directive***

On March 4 of this year, President Clinton issued a Directive to Department and Agency heads, calling for a complete regulatory review. We think that the President hit all the key points and pressed all the right buttons in this directive. But will the memorandum ultimately be lost in the regulatory bog, as have so many similar efforts? Obviously, that is the question this hearing has been called to probe.

**Weeding Out Unneeded Regulations.** The President directed all agencies to eliminate unneeded regulations and revise those that are necessary but outmoded. The Directive even provided specific guidance on the standards to use and the questions to ask. Often, regulators claim that the real burdens stem from an underlying statute and that there is very little a regulator can do



to reduce the burden on the private sector. This is a valid statement. But the President's directive also calls on agencies to identify those burdensome regulations which require legislative action. So, the problem of statutory inflexibility should not hinder a full reporting of unnecessary and burdensome regulations.

**Using the Right Incentives.** The President also requested a reordering of priorities for agency enforcement personnel. The President directed that rewards and evaluations of agency personnel should not be based upon process or punishment. It should be based upon results. If fully implemented, this change will be of major significance. Much of what the small business community objects to in the current regulatory environment is the "gotcha" attitude of many agency personnel. A more rational and cooperative spirit from agencies could greatly improve compliance.

**Talking to Those Affected.** Finally, the President directed agencies to work more directly with frontline regulators and the people being regulated. More input from these individuals and organizations will improve future regulations, thereby improving compliance.

### ***A Progress Report Card***

When Vice President Gore addressed the White House Conference on Small Business on June 12, he spoke about regulatory reform in terms of his reinventing government message. At the end of his prepared remarks, the Vice President went on to say that there should be a "report card" for the

Administration, to measure how well the government is doing in removing and reforming unreasonable regulations. Chairman Meyers, we were very happy to hear that the Vice President had picked-up on your idea of developing such a report card. And while the Administration should develop its own report card, it is also important for there to be such a report that looks at regulations specifically from the small business angle. We think that the Small Business Committee can play a key oversight role in developing and monitoring this small business regulatory report card.

In the past, an easy way out for agencies has been to simply put on the chopping block regulations that are obviously silly, but are also not very significant in terms of the time and resources necessary to comply. We believe that any meaningful progress report on reducing the regulatory burden should quantify the time and financial resources that have been saved the private sector. It should also spell out which industries and sizes of businesses have been helped. To talk about reducing regulations in terms of pages or pounds of regulations is meaningless. Instead, we should talk about hours and dollars.

We should also put those saved hours and dollars into perspective. How significant a percentage are they in terms of the total regulatory burden imposed upon small business by the federal government or the particular agency? By looking at the picture in this complete way, we will know when a major difference has been made.

On the enforcement side, change is also in order. Over time, the key measure of success should be a decrease in the number of fines issued,

combined with an increase in compliance rates. Such a change would clearly indicate an attitudinal change at the agencies and among their enforcement personnel.

But it is difficult to think about how such a report card could be developed without knowing what changes the agencies have recommended and whether they are the changes that are important to the small business community. Perhaps the list of agency recommendations could be released so that it could be compared with the priorities expressed by the recent White House Conference on Small Business. It would be a shame to discover too late that regulators had been working furiously to reform the wrong regulations.

This Committee was key to the ultimate passage of the new Paperwork Reduction Act. Among other major reforms, that Act called for a reduction in federally required paperwork of ten percent. This Committee could continue to play an important role by exercising oversight over this issue. Without the relentless Congressional spotlight, this reduction might never happen. We applaud the Small Business Committee for the activist role it has taken.

## *Conclusion*

I appreciate the opportunity to have been before you today in order to present our point of view. We thank the Committee for its critical interest and help on regulatory reform. This oversight hearing is very important. While the President March 4 directive says the right things, follow-up and oversight is the only way to ensure that its goals are finally met.

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U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

Testimony of  
Jere W. Glover  
Chief Counsel for Advocacy  
United States Small Business Administration  
Before the  
Committee on Small Business  
of the  
United States House of Representatives  
July 18, 1995

Good morning, Chairwoman Meyers and members of the Committee. It is always a pleasure to appear before the Committee, particularly when the Committee is examining an issue of primary importance to me -- regulatory reform and reduction of the regulatory burdens on small businesses.

As a preliminary matter, let me state that I believe that regulatory reform cannot and should not simply mean an absolute reduction in the number of regulations. In some instances, such as the call reporting requirements for bank loans, the information garnered through the regulatory process is extremely beneficial to small business.<sup>1</sup> Therefore, the ultimate goal of regulatory reform should be to draft only those rules that are necessary in a manner understandable to the small business community.

I believe that this Congress understands the importance of regulatory reform by the prominence it has given the subject and the effort it has undertaken to craft legislation on an issue in which the average voter simply does not understand the complexities associated with the drafting of regulations. While most small businesses do not fully appreciate the complexity of the regulatory process, they certainly understand the

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<sup>1</sup> Without call reporting data, it would be impossible to know what efforts banks are making to provide financing for small business. I believe that the benefits to the small business community from that data outweighs the relatively minor costs imposed on the banks in compiling the call report data.



significance of the outcome and will be closely watching the ongoing legislative process.

#### *I. Efforts by the Administration*

Since President Clinton took office, a concerted effort has been made to reform the federal bureaucracy and improve the process of federal regulation. One of President Clinton's first acts was to appoint Vice President Gore to chair a task force that would reinvent government. The National Performance Review resulted in the Administration taking actions that will reduce the cost of government, improve the efficiency of the bureaucracy, and limit the increases in burdens on small entities. However, President Clinton noted that the effort of the National Performance Review was at best a starting point, not an end in itself.

The National Performance Review generally focused on the mechanics of government operation, i.e., how to empower agency personnel and make the government carry out its functions more smoothly. It only tangentially addressed an issue of grave concern to this committee today -- the process by which the government promulgates regulations. The President recognized that a separate mechanism was required to address that issue.

Roughly one month after the release of the National Performance Review, the President issued an executive order, No. 12,866,

which required federal agencies to conduct extensive reviews of their proposed regulations if they had an effect on the economy of \$100 million or more. The executive order also applied if the proposal would have a significant impact on a sector of the economy. If a proposed rule met the standard of the executive order, the agency would be required to perform a cost-benefit analysis, seek out the least costly method of achieving the desired regulatory result, and examine whether a federal solution was the most appropriate. The executive order also ordered that examination of significant rules take into account the size of the business being regulated. Oversight of the order's implementation was delegated to the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

The OMB together with the Small Business Administration organized a forum of various federal agencies to examine the cumulative impact of regulations on certain segments of the economy dominated by small business. The input from small businesses on methods to reduce the cumulative impact have led to a number of changes in Administration policy. They include reductions in paperwork requirements and modification of enforcement policies to help small businesses achieve compliance with the regulations rather than simply pay fines.

The President realized that these efforts, in themselves, were insufficient to redress completely the regulatory burdens faced by small business. Mechanisms were needed to ensure that those being regulated could be assured that agencies were taking their analytical responsibilities seriously. Therefore, the President with the support of Phil Lader, now Administrator of the SBA, agreed that strengthening the judicial review provisions of the Regulatory Flexibility Act would provide small businesses with the opportunity to ensure the accountability of federal agencies. In this way, small businesses would not have to rely on the largesse of federal agencies to ensure that they were not being overwhelmed by regulation.

In late 1994, the President ordered all executive branch agencies to revisit their reinvention goals to see how they could further improve operations. The President also ordered all executive branch agencies to review each and every regulation published in the Code of Federal Regulations to see which would be needed and which could be discarded. A report on that process will be released shortly and the President announced at the White House Conference on Small Business that a preliminary result of the regulatory review will result in the loss of some 16,000 pages in the Code of Federal Regulation.<sup>2</sup> As part of the review, the

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<sup>2</sup> I think we can all survive the removal of regulations defining grits and the appropriate tests needed to ensure that they meet the federal definition. America survived quite adequately before those standards were adopted and I am certain  
(continued...)

Small Business Administration will be reducing the number of its regulations by forty percent.

## II. *Measuring Regulatory Reform*

The push by both the Administration and the Congress to reform the regulatory process does not address the issue of how to measure the success of these efforts. For example, the enactment of the Administrative Procedure Act regularized the process for promulgating rules and ensuring some consistency in decisionmaking<sup>3</sup> but did not reduce regulatory burdens on small business or ensure that agencies fully explained their rationale for adopting specific rules. Therefore, it is incumbent upon both Congress, in its oversight capacity, and the Administration, in its role as implementers, to ensure that regulatory reform efforts have concrete results. This requires that standards be developed that can appropriately measure the impact of regulatory reform on small business.<sup>4</sup>

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<sup>2</sup>(...continued)

that it will survive the imminent apocalypse from the deletion of that regulatory standard.

<sup>3</sup> See *Morton v. Ruiz*, 415 U.S. 199, 232 (1974).

<sup>4</sup> To the extent that there are measures of regulatory reform that do not allocate the cost savings of reform between large and small businesses, I do not believe the Committee should utilize them in the report card.

The most obvious test is the amount of dollars saved by small businesses as a result of regulatory reform. Unfortunately, that measure is not easy to develop. Little data exists which accurately analyzes the impact of regulation on the economy, much less on small business. Nor does available data analyze the cumulative impact from various agencies on small business. For example, even if the Environmental Protection Agency is capable of determining the impact of a proposed regulation on a category of small businesses, the agency is ill-equipped to consider this impact in light of the burdens being imposed by other agencies on the same category of business. Even though actual dollar savings is the best measure of regulatory relief, it may be the hardest one to measure.<sup>5</sup> Therefore, some alternative, albeit less accurate proxy must be developed.

One potential proxy is the number of regulations that are not promulgated. For example, the Office of Advocacy is regularly involved in reviewing proposed federal rules under our statutory responsibility to monitor agency compliance with the RFA. Our comments on rulemakings such as those involving ergonomics and nutrition labeling of menus by restaurants have noted the severe

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<sup>5</sup> In many respects, the most accurate measure, from a purely economic standpoint, is often the most difficult one to calculate. For example, economic theory teaches that predatory pricing occurs when a firm prices its products below its marginal cost. Unfortunately, the marginal cost of any consumer product is nearly impossible to ascertain. Thus, the courts in determining whether a predatory pricing violation of the Sherman Act has occurred will use a proxy such as average variable costs.



impact they will have on small business. These comments have provided the foundation for OIRA and cabinet level officials to terminate those and other rulemakings likely to impose severe burdens on small business.

The effect of this activity goes beyond simply counting the number of regulations that are terminated prior to adoption. This activity is likely to lead to changes in federal agency culture as bureaucrats begin to recognize that all of their regulatory proposals may not reach fruition. Federal regulators are will then be more selective in putting forth regulatory proposals that will ultimately be enacted. While this cultural change is far more significant than terminating rulemakings, it may be impossible to measure.

As a corollary to rulemaking termination, one also might consider the number of current regulations that are repealed. While this measure has intuitive appeal to the general public,<sup>6</sup> it may either overstate or understate the success of regulatory reform. For example, the removal of 1,000 regulations, none of which are directed at small business, may do little to reduce small business regulatory burdens. On the other hand, the elimination of one regulation such as the Occupational and Safety Health Administration's Hazard Communication Standard may do more to

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<sup>6</sup> The typical headline could read that the Administration drops 700 unnecessary regulations as a result of review.

reduce small business regulatory burdens than the elimination of entire volumes of the Code of Federal Regulation.<sup>7</sup> Therefore, simple numerical counts of regulations do not provide, by themselves, an adequate proxy for measuring the success or failure of regulatory reform.

An equally appealing measure to the number of rules eliminated is the reduction in the number of pages in the FEDERAL REGISTER. There is little doubt that this is a relatively easy measure to calculate and makes an excellent headline. However, the true measure of regulatory reform is not the number of pages that must be perused but whether the regulations themselves are easily understood and subject to straightforward compliance. The number of pages in the FEDERAL REGISTER can be modified as a result of more agencies adding more extensive supplementary material or other agencies deciding to publish summaries.<sup>8</sup> Moreover, current efforts of reform in Congress are likely to lead to a substantial increase in the number of pages<sup>9</sup> in the FEDERAL

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<sup>7</sup> A similar argument can be made with respect to proposed regulations that are terminated or do not even reach the publication stage.

<sup>8</sup> For example, the Federal Communications Commission simply publishes summaries of their rulemaking issuances in the FEDERAL REGISTER. If the Commission decided to publish the full text of those issuances, it would dramatically increase the number of pages in the FEDERAL REGISTER.

<sup>9</sup> Imposition of more extensive analyses prior to the promulgation of rulemaking probably will lead to more extensive supplementary statements being published in the FEDERAL REGISTER.

REGISTER even though the actual number of rules promulgated may decrease.

Another potential proxy is the reduction in paperwork achieved by regulatory reform. Pursuant to the Paperwork Reduction Act (PRA) and its amendments, the OIRA is charged with overseeing the implementation of the PRA. As part of its responsibilities, the OIRA requires agencies to submit detailed estimates of the number of hours and costs associated with completing an information collection requirement.<sup>10</sup> That information can be totalled for each agency and for the entire federal government. While the OIRA paperwork costs are among the most complete and accurate in the federal government, this OIRA does not differentiate between large and small businesses or cumulate paperwork compliance requirements imposed by the diverse federal agencies for specific industries. Nevertheless, the paperwork burdens represent an easily quantifiable statistic on the partial success or failure of regulatory reform.

One of the gravest concerns raised by the joint OMB/SBA regulatory forum and the delegates at the White House Conference on Small Business was the detachment that small businesses felt

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<sup>10</sup> The PRA does not specifically refer to paperwork burdens. Rather it prevents any federal agency from collecting the same information from nine or more persons or a federal agency requiring the dissemination of the same information to nine or more persons. The PRA refers to this entire category as information collection requirements (ICR).

from the regulatory process. They firmly believe that federal agencies often ignore their concerns when writing regulations or draft regulations that are impossible to follow. Small businesses desire to do their part to comply with the law but federal agencies are often clueless as to the impact that their proposals will have on small business. One method of measuring the success of regulatory reform is to determine whether this problem has been alleviated.

Although no direct measure exists, a valuable proxy is the increase in the number of negotiated rulemakings undertaken by the agency in which small businesses are participants. Another potential yardstick is the number of small businesses or their trade groups that have been directly contacted by federal agencies when considering the promulgation of a rule. These measures will demonstrate federal agency commitment to include small business in the formulation of policy.

In certain instances, negotiated rulemaking simply is not a viable alternative. Agencies must ensure that other mechanisms are in place to represent small businesses in the rulemaking process. Having an agency ombudsman whose primary responsibility<sup>11</sup> is to relay regulatory concerns to agency

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<sup>11</sup> All agencies have ombudsman in their Office's of Small and Disadvantaged Business Utilization. However, these ombudsmen usually are responsible for a variety of activities primarily related to government procurement. Thus, they tend not to follow  
(continued...)

decisionmakers is certainly an important measuring rod of an agency's effort to eradicate burdens on small business.

A significant factor in ensuring that regulatory burdens on small business is reduced is compliance with the RFA. I do not need to tell this committee of the importance that proper analysis pursuant to the RFA would have on paring regulatory burdens on small business. The RFA still represents the only statute in which Congress has dictated that agencies, in the promulgation of their rules, must take into account the impact on small business. The failure of agencies to comply usually means that the agencies have missed significant alternatives that lessen regulatory burdens on small business.<sup>12</sup>

One potential method for assessing whether agencies have adequately assessed the impact of their proposals on small business is to utilize the criteria that the Office of Advocacy has used and continues to use in determining whether to intervene in a rulemaking. First, the Office determines the number of small businesses affected. Then the Office examines the severity

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<sup>11</sup>(...continued)  
regulatory trends or the impact that regulation has on small business.

<sup>12</sup> The Office of Advocacy makes a special effort to inform agencies of their failures to properly analyze the impact of regulations on small business. Appendix A lists a sample of the regulations in which Advocacy's comments have played a role in reformation of regulations. A more complete analysis can be found in the yearly reports of the Chief Counsel for Advocacy.



of the impact with the most severe proposals receiving the highest priority. The Office then considers whether Advocacy comments will have a sufficient impact to alter the course of the rulemaking. If so, the Office of Advocacy files comments. This process represents the most comprehensive methodology for assessing agency consideration of impacts on small business.

Another appropriate measure of the success of regulatory reform is increased compliance with the RFA. While my annual report is certainly one measure of compliance, a more quantitative, albeit less accurate, yardstick is the number of initial regulatory flexibility analyses (IRFAs) performed by agencies. An increase in the number of IRFAs will demonstrate that federal agencies are taking into account the concerns of small business at the inception of the rulemaking process. More significantly, the preparation of IRFAs should lead the agency to tailor regulations in a manner to achieve maximum compliance with its regulatory objective. Ultimately, the goal of regulatory reform is better rules and an increase in the number of IRFAs will show that the agencies are making an effort to improve their rules.

Rulemaking represents only one aspect of the regulatory process. Even with regulations tailored for small businesses and reductions in regulatory burdens, small business still will have to comply with various regulations. As both the President and Vice President noted at the White House Conference on Small

Business, reformation must also extend to the enforcement process. Rules interpreted in a picayune fashion or enforced in an overzealous manner defeats the best intentions of regulation writers. Thus, one of the key elements in the reformation of the regulatory process is the need to transform federal agencies from enforcers to providers of compliance assistance.

Transformations of attitudes among federal bureaucrats is not easily measured. Nevertheless some appropriate proxies, when examined together, will paint a picture of a changing federal government. Small businesses should see a decrease in the number of fines levied for first time offenses. They also should see the severity of fines reduced if they have made efforts to comply with the regulations. More importantly, they should get more visits from inspectors seeking to assist the businesses in complying with regulations rather than in issuing fines. These changes will then result in promotions based on whether federal bureaucrats provided compliance assistance rather than the quantity of fines issued.

This transformation does not promise to occur quickly. Nevertheless the alteration in which the government first looks to assist rather than fine will play a major role in regulatory reform. This will lead to greater compliance by small business with federal regulations, will show small businesses that federal agencies truly are their partners, and will reduce the cynicism

among the population that the government is not interested in serving the public that supports it with hard-earned tax dollars.

An equally significant (and in many cases a more telling) yardstick of regulatory reform is the increase in compliance by small business. Individuals providing input to the SBA/OMB forum and the delegates to the White House Conference on Small Business made it abundantly clear that they did not want to be scofflaws. However, due to the way regulations are written it becomes nearly impossible for small businesses to know how to comply with certain regulations. As a result, they often take calculated risks not to comply. Regulatory reform should lead to more compliance by small business because the regulations are simpler, easier to understand, and more tailored to the needs of small business. Thus, odd as it may seem, an increase by small business in compliance and concomitant reductions in either fines or compliance assistance appropriately demonstrates that regulatory reform is working.

Another measure of the change in the culture of the federal bureaucracy is the frequency with which it asks Congress for assistance in resolving a problem. The Office of Advocacy is often told that less burdensome alternatives cannot be adopted due to statutory constraints. Yet, very few agencies<sup>13</sup> ever

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<sup>13</sup> One of the most widely known efforts was the Food and Drug Administration's request, in conjunction with industry, to  
(continued...)

return to Congress and request modification of the statute to enable the agency to promulgate a less burdensome regulation on small business.

### III. Conclusion

The regulatory process is not perfect and no one involved in that process on a daily basis would contest the need to improve it. The Office of Advocacy has preached for nearly twenty years the need to reform the regulatory process. With this President and the efforts currently underway in Congress, I feel like I am preaching to the choir. The President has undertaken numerous initiatives designed to improve the regulatory process and lessen burdens on small business. Congress is attempting the same thing. All have the objective of ensuring that small businesses are released from their regulatory shackles to do what they do best -- innovate and create jobs.

The question before the Committee today has been how do we measure the success of regulatory reform. No one measure is ideal. Rather, I believe that you need to examine a variety of proxies which demonstrate changes not just in the number of regulations but the attitude of federal agencies to the

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<sup>13</sup>(...continued)

expand the small business exemption in the Nutrition Labeling and Education Act. President Clinton signed that expanded exemption into law in the summer of 1993 thereby substantially reducing the burdens of nutrition labeling on small food processors.

rulemaking and enforcement processes. The measures I have discussed are only some suggestions. I am sure others, such as the General Accounting Office, also will have useful suggestions. I look forward to working with the Committee in its oversight efforts of the regulatory process and the Committee can call on me and my staff to provide it with necessary assistance.

I am pleased to answer any questions the Committee may have.



## APPENDIX A -- ADVOCACY SUCCESSES at REGULATORY REFORM

1. Department of Agriculture: Food Safety Inspection Service
  - a. Definition of Frozen Poultry
  - b. Safe Handling of Meat Products
2. Environmental Protection Agency
  - a. Community Right-to-Know Regulations
  - b. Stormwater Control Regulations
  - c. Toxic Release Inventory Requirements
  - d. Toxic Release Peak Reporting Regulations
  - e. Underground Storage Tank Technical and Financial Standards
  - f. Water Pollution Effluent Limitations
3. Federal Communications Commission
  - a. Filing Fee Reduction for Small Cable Operators
  - b. Paperwork Reductions for Small Telephone Companies
  - c. Rate Regulatory Relief for Small Cable Operators
4. Internal Revenue Service
  - a. Modification of Subchapter K Abusive Partnership Rules
  - b. Reformation of Subchapter S Corporation Regulations
5. Occupational Safety and Health Administration
  - a. Termination of the Ergonomics Proposed Rulemaking
6. Pension and Welfare Benefit Administration
  - a. Pension Simplification (Legislation will be required for certain aspects)



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TESTIMONY  
OF  
C. BOYDEN GRAY  
CHAIRMAN, CITIZENS FOR A SOUND ECONOMY  
BEFORE THE  
HOUSE SMALL BUSINESS COMMITTEE

July 18, 1995

Good morning. Madam Chairman and Members of the Committee: My name is C. Boyden Gray, and I am Chairman of Citizens for a Sound Economy, a 250,000 member nonpartisan, non-profit consumer advocacy group that promotes market-based solutions to public policy problems. Thank you for inviting me here today to discuss the importance of regulatory reform for small businesses and the importance of implementing measurable reform objectives. In particular, as the administration attempts to address the regulatory burden confronting small business, it will be important to assess the effectiveness of their efforts. To this end, there is a need to develop a yardstick, or report card, to measure the success in easing the burden on consumers and small businesses.

The annual regulatory burden in the United States is more than \$500 billion, or \$5,000 per household. This amounts to nearly one-half of the typical family's annual federal tax burden. However, the regulatory burden is a hidden tax that does not receive the public scrutiny reserved for regular tax increases. Consumers pay the costs indirectly, through higher priced goods and services and through a restricted choice of products available in the marketplace. Although hidden from the consumer, the regulatory burden has real impacts on the consumer's quality of life.

The burden of federal regulation is also borne disproportionately on the shoulders of small businesses. Paperwork requirements and regulatory mandates can require significant human resource and time requirements that redirect the efforts of small businesses away from entrepreneurial growth and toward recordkeeping and other non-productive activities. Such burdens reduce business expansion that, in turn, can reduce job growth. A July 17, 1995 article in the *Washington Post* provides an overview of the expansive regulations confronted by small businesses in the United States. The *Washington Post* estimates that one small firm, Drypers Corp., paid \$1,164,510 last year to comply with federal paperwork requirements.<sup>1</sup>

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<sup>1</sup>See Jay Matthews, "All Too Often, the Regulatory Paper Trail Leads Nowhere," *Washington Post*, Monday, July 17, p. A-9.

Such regulatory burdens impose significant costs on the most dynamic sector of the economy. During the economic expansion from 1982 to 1989, small businesses (defined as firms with fewer than 500 employees) were responsible for two out of every three new net new jobs created. Firms with fewer than 20 employees generated just over half of the new jobs during this period.<sup>2</sup> Excessive paperwork and red tape reduces the ability of small business to create new jobs and opportunities.

Overall, the government burden on small business increased over 34 percent between 1989 and 1992, halting job creation in small businesses. To adjust to the higher costs of doing business, small businesses rely on some combination of higher prices for consumers on final goods and services, and lower prices for labor (or reduced levels of employment) and other factors of production. Consequently, consumers may face higher prices, restricted availability of goods and services, and fewer job opportunities.

Despite recent efforts to reinvent government, small businesses continue to face a substantial regulatory burden. Consider the food safety rule currently under consideration by the Food Safety and Inspection Service (FSIS) of the U.S. Department of Agriculture. The proposed rule would significantly alter current food safety programs by implementing a new approach to inspections using the principles of Hazard Analysis Critical Control Points (HACCP). Although increasing the safety of our food supply is a laudable goal, the proposed approach may not be the best alternative, particularly from a small business perspective. In fact, the Office of Advocacy within the Small Business Administration, in its comments on the proposed rule, stated, "...the plan as proposed, fails to meet fundamental agency objectives, fails to meet Administration objectives of reduced regulation and paperwork, and fails to account adequately for the special compliance problems likely to be encountered by small businesses."<sup>3</sup> The comments continue, stating that, "Unless FSIS has connections with the Psychic Friends Network, FSIS's assumptions about the high level of projected savings [from new inspection procedures] defy rational thinking and analysis."

#### A REGULATORY REFORM REPORT CARD

To ease the burden on small businesses and consumers, regulatory reform must reassess the existing regulatory burden and introduce institutional changes to ensure that future regulations provide benefits in excess of their costs. Current regulatory reform bills in the House and Senate attempt to provide the institutional changes necessary for true regulatory reform. The use of cost-benefit analysis and risk assessments based on sound science will promote a more reasonable approach to regulation that avoids excessive or unnecessary regulations. Moreover, judicial review and lookback provisions offer the

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<sup>2</sup>See "Derailing the Small Business Job Express," Joint Economic Committee, November 7, 1992.

<sup>3</sup>See Office of Advocacy, Small Business Administration, comments on "Regulatory Impact Analysis for the Proposed Rules Regarding Pathogen Reduction in Red Meat and Poultry, Hazard Analysis Critical Control Point (HACCP) Systems; Docket No. 93-016P, 60 Fed. Reg. 6774," July 5, 1995.

opportunity to hold federal agencies accountable for their actions and to address burdensome regulations already on the books that do not provide and net benefits. H.R. 9--a component of the Contract with America--and S. 343 are regulatory reform measures that attempt to implement a more reasonable rulemaking process based on sound science and a careful examination of the costs and benefits of federal regulations.

It is important to realize that regulatory reforms that eliminate unnecessary paperwork and mandates are particularly important to small businesses. In many instances, larger, well-established firms, rely on regulations as barriers to entry that limit the ability of smaller firms to enter the market. For example, the *Washington Post* reports that larger companies use patent laws against small competitors such as Drypers Corp., which I referred to earlier. In many ways true regulatory reform is an issue of small business, not big business. Broad-based regulatory reform bills would provide a boost to small business by curtailing the practice of limiting competition through regulation.

In addition to comprehensive regulatory reform bills, there are a number of ways the Administration can eliminate excessive or unnecessary regulations on small business. In recent months President Clinton has unveiled several major reform efforts that, if fully implemented, could reduce the regulatory burden. In conjunction with the President's executive order on regulatory reform, the recent reforms provide the opportunity revisit the regulatory burden with an eye toward eliminating those regulations that provide no net benefits.

#### **Executive Order No. 12866**

The first place to start when assessing the impact of the administration's reform efforts is Executive Order 12866. Signed by President Clinton in 1993, the order outlined new guidelines for the agencies and the Office of Information and Regulatory Affairs when promulgating and reviewing regulations. Although in many ways the executive order weakens the centralized review process, it does contain recommendations that agencies use both risk assessment and market-based regulations wherever possible. In terms of reform, these two points alone would do much to reduce the regulatory burden.

Insight into the current regulatory process is offered in a recent study by the Institute for Regulatory Policy of Environmental Protection Agency (EPA) regulations issued by the Clinton Administration. This study examined all EPA proposed and final rules published in the *Federal Register* during the second six months after the Clinton regulatory reform executive order took effect. Based on an analysis of 222 substantive rulemakings, the study found that only six rulemakings offered a determination that there was a "compelling public need" for regulation, and only six rulemakings demonstrated that the benefits justified the costs of regulation. Moreover, only 14 rulemakings examined regulatory alternatives, and

only eight of these stated that the most cost-effective rule had been adopted.<sup>4</sup>

Initially, it would be valuable for the administration to conduct a similar exercise for all agencies covered by the executive order and provide the findings to the Congress. In addition, the administration should require all agencies to provide a discussion of the use of risk assessments and market-based incentives in the rulemaking process. A listing of the number of risk assessments conducted as well as the number of rules where market-based incentives were considered as well as the number of rules where market-based incentives were actually adopted would be useful. Both risk assessment and market-based regulations have been identified as powerful tools for minimizing the regulatory burden and ensuring that scarce resources are allocated effectively. For example, Steven J. Milloy has found that sound risk assessment can reduce the costs of Superfund cleanups by 60 percent.<sup>5</sup> Market-based regulations in the acid rain program have reduced emissions at one-quarter of the initial costs and 20 percent ahead of schedule. The administration should use these tools at every opportunity.

### Reinventing Government

In March 1995, President Clinton launched the "Regulatory Reinvention Initiative" to clarify the importance of regulatory reform and to provide guidelines to federal agencies for regulatory reform. In a memorandum to the agencies, President Clinton stated, "...not all agencies have taken the steps necessary to implement regulatory reform. To reaffirm and implement the principles of Executive Order No. 12866, regulatory reform must be a top priority."<sup>6</sup> President Clinton goes on to require a "page-by-page" review of each agency's regulatory program.

Under the Regulatory Reinvention Initiative, agencies are required to carefully implement regulatory review as outlined in Executive Order No. 12866. This includes identifying obsolete regulations, requiring a greater use of risk assessment, and establishing flexible regulatory goals that can be met through performance standards and market-based mechanisms. In measuring progress on eliminating unnecessary regulatory burdens, it would be useful to have the agencies report on their reform efforts in each of these areas. A regular six-month report, for example, would be a useful tool for evaluating progress.

In addition to the general reform measures aimed at easing the overall regulatory burden facing small businesses, President Clinton has also announced particular reforms

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<sup>4</sup>*Ensuring Accountability for Developing Well-Founded Federal Regulations*, The Institute for Regulatory Policy, Federal Focus, Inc., April 1995, Washington, D.C.

<sup>5</sup>See Steven J. Milloy, *Science-Based Risk Assessment: A Piece of the Superfund Puzzle*, National Environmental Policy Institute, Washington, D.C., 1995.

<sup>6</sup>See "Regulatory Reinvention Initiative," White House Memorandum, March 4, 1995.



within those agencies responsible for much of the regulation and paperwork imposed on small businesses: the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration, and the Food and Drug Administration. An accurate yardstick of reform should also include specific measurements on these specific initiatives.

### **The Environmental Protection Agency**

In the past two decades, health and safety regulations--particularly environmental regulations--have superseded economic regulation as the major force behind regulatory expansion. For example, by the year 2000 existing environmental regulations will cost American consumers more than \$185 billion annually. The cost of Superfund alone has been estimated at \$150 billion over the next 20 years. The Administration has acknowledged the burden that environmental regulations may impose, and the EPA has taken steps to identify and eliminate needless regulations. In fact, the EPA has told the White House that nearly three-quarters of Title 40 of the Code of Federal Regulations will be deleted or modified (although EPA states that most changes are "relatively small ones"). The EPA has also announced a 25 percent reduction in paperwork.

Any measure of the Administration's efforts to ease the burden on small business should include an evaluation of the EPA's progress towards the goals it has identified in its report to the President. The following elements are of particular interest: open-market air emissions trading, effluent trading in watersheds, refocusing hazardous waste regulation on high risk wastes, refocusing drinking water treatment requirements on the highest risks, expanding the use of risk assessment, the 25 percent reduction in paperwork, one-stop emission reports, risk-based enforcement, incentives for auditing, disclosure and correction, and self certification.

It is important to monitor progress with these reforms. Both the executive branch and the Congress can play a significant role in moving these reforms forward. The value of an ongoing assessment of agency progress by an outside body such as the Congress cannot be overstated. Many of the reforms announced by the EPA and the White House are not new. In fact, many of the same recommendations were made during the Bush Administration. Previous attempts at reform relied exclusively on the agency for implementation; I would recommend that current reform attempts be accompanied by Congressional oversight and monitoring to ensure their success.

### **The Food and Drug Administration**

The Food and Drug Administration (FDA) has regulatory jurisdiction over approximately 25 cents out of every consumer dollar. The agency has been criticized for its delays in approving new medical technology in a timely fashion. The costs of delays and onerous regulation on small business have not been fully appreciated. According to the Medical Device Manufacturers Association, 72 percent of all medical device companies employ 50 or fewer employees. There are over 7,000 medical device companies in the

United States employing approximately 270,000 Americans. Similarly, the makeup of the biotech industry is largely small businesses. Ernst and Young reports that 37% of biotech publicly held biotech companies in the United States employ fewer than 50 people.

In April of this year, as part of the National Performance Review, the Administration presented the report "Reinventing Drug and Medical Device Regulations." The Congress should consider the following criteria to judge the effectiveness of the Administration's proposals:

- **Review Times.** At a minimum, the FDA needs to adhere to statutory review times for medical product approvals. Every day the FDA improves its review time performance, patients are granted access to better medical technology.
- **Dissemination of Scientific Information.** The FDA does not allow the free dissemination of medical information from researchers and manufacturers to doctors and patients. Efforts to lift these restrictions should be encouraged and monitored over time.
- **Medical Device Exemptions from Premarket Notification.** The agency should exempt at least 125 additional medical device categories from premarket notification requirements. Even if the Administration achieves this modest goal, only about one-third of all device categories will be exempted from agency review.
- **Other areas to examine:** Simplification of Good Manufacturing Practice (GMP) regulations, updated export regulations, relief from adverse incident and medical device reporting paperwork requirements, elimination of the Reference List program (including a separation of 510(k) product submissions and GMP violations), and the elimination of the FDA policy of "comparative effectiveness" when evaluating new product applications.

### **The Occupational Safety and Health Administration**

The Administration's Reinventing Government initiative also includes the Occupational Safety and Health Administration as an agency where reforming the existing regulatory program could substantially ease the regulatory burden. In fact, the National Performance Review report states: "Many people see OSHA as an agency so enmeshed in its own red tape that it has lost sight of its own mission. And too often, a "one-size-fits-all" regulatory approach has treated conscientious employers no differently from those who put workers needlessly at risk."<sup>7</sup> In response to such concerns, the National Performance Review outlines a streamlined approach to regulation that includes three major components:

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<sup>7</sup>See President Bill Clinton and Vice President Al Gore, "The New OSHA: Reinventing Worker Safety and Health," National Performance Review, May 1995, p. 2.

- **The New OSHA:** A shift away from the traditional command-and-control approach to regulation. Regulations should be crafted to provide choice and flexibility that provide employers the flexibility to comply with regulatory mandates in the most cost-effective manner.
- **Common Sense Regulation:** Focus regulations on those hazards that pose the greatest risk to workers, and eliminate or modify out-of-date regulations that do not provide benefits.
- **Results, Not Red Tape:** OSHA will shift its priorities to focus on serious hazards and dangerous workplaces when implementing and enforcing regulations. The focus will be on improved safety and eliminating red tape.

True reforms along these lines would help strengthen our country's small businesses. In turn this would create jobs and increase our competitiveness in a global economy. It is important, therefore, to ensure real success with these reform efforts. Periodic reviews of agency progress that includes quantifiable and objective goals and timetables would underscore the importance of reform and speed the process.

In the past, one of the major problems with OSHA has been a reliance on an "enforcement first" approach to regulation at the expense of compliance assistance aimed at helping small businesses conform with OSHA regulations. The Administration's reforms of OSHA seek to tilt the balance back toward compliance assistance, achieving the same goals of worker safety and health, but with less punitive measures. Identifying how OSHA plans to increase employer participation in the on-site and voluntary protection programs would be an important measure of OSHA reform. Although the National Performance Review report fails to mention specifically these two programs, both represent successful but under-utilized efforts to enhance voluntary compliance among businesses.

Another problem of past enforcement has been treating all business owners alike, making no distinctions between those who make good faith efforts to enhance worker safety and those who do not. The reforms call for focused inspections that target problem employers and those activities that pose the greatest risk in the workplace. Progress in this area may be measured in terms of how many focused inspection programs have been established. A focused inspection is tailored to specific industries and specific hazards and can be used as an alternative to general inspections for those firms with safety programs in place. The level of reliance on focused inspections and the number of industries for which they have been developed are both measures of reform that should be monitored and evaluated over time.

Citations issued by OSHA may also provide evidence of reform. For example, have there been changes in the level of citations compared to past citations, particularly with respect to the number of minor violations? And are the citations identified by OSHA's 900 inspectors related to genuine safety hazards and swift abatement of the problem? The

citation record is a good measure of the degree of institutional change within the agency. OSHA inspectors are often the only interface between employers and the agency, and employers will measure reform based on the behavior of inspectors.

Reform also requires, however, a review of the underlying institutions and regulations of OSHA. The agency has claimed it will review its 695 rules to determine whether change is necessary. This effort should be encouraged and goals identified. How many regulations have been reviewed? How many eliminated? How many modified? And how many regulations have been streamlined and rewritten in plain English so that business owners can understand what they must do to comply? OSHA appears determined to move forward with reforms. If properly conducted, much of the burden on small businesses may be eased. The agency itself is devising a program for measuring the success of its reforms. It would be useful to examine the agency's measures of success as well as the extent to which the program for monitoring reform efforts has been adopted by the agency.

### **Paperwork Reduction Act of 1995**

Federal paperwork requirements impose real costs on consumers and businesses. In 1992, the federal paperwork burden was roughly 6.5 billion hours, which is equivalent to more than 3 million people working full time simply to comply with federal information requests. The Paperwork Reduction Act established the Office of Information and Regulatory Affairs to streamline the paperwork burden. Since 1980, it is estimated that OIRA has eliminated 600 million hours of unnecessary paperwork, saving consumers and businesses more than \$6 billion annually, by modest estimates. However, a 1990 Supreme Court Decision, *Dole v. United Steelworkers of America*, opened a major loophole that may exempt at one-third of the federal paperwork burden from OIRA's review.

This year, however, President Clinton signed the Paperwork Reduction Act of 1995 into law. The new Paperwork Reduction Act was an important element of the House's Contract with America that received strong bipartisan support in both houses of Congress. The reauthorization was written in the true spirit of the original act, with the explicit goal of minimizing the federal paperwork burden imposed on the public. The new law provides the tools and flexibility to eliminate excessive federal information requests and provides consumers and businesses an avenue to evaluate and participate in the information collection review process.

The proposed rule for the Paperwork Reduction Act of 1995 was recently published in the *Federal Register*. Citizens for a Sound Economy Foundation is currently evaluating the rule and will file comments. To guarantee that consumers and small businesses achieve the full benefits of the legislation, it may be useful to have this Committee examine all comments filed on the proposed rule to ensure that they are taken into consideration when developing the final rule.

A major element of the Reinventing Government Initiative calls for reducing the

paperwork burden within the various agencies. The EPA, for example, will reduce its paperwork burden by 25 percent. For this to be a meaningful exercise, however, the EPA--and all federal agencies--must carefully establish the baseline for the agency's paperwork burden. This requires an accurate assessment of all information collection requests made by the agency, as well as identifying any "bootleg" information requests that exist within the agency. Only after the baseline is clearly established will meaningful reductions in paperwork and red tape be possible.

## CONCLUSION

The administration's announcements and intentions for reform will yield little if agency discretion is overlooked. The federal bureaucracy has established itself as the fourth branch of government, something that was not contemplated by the Founding Fathers. Consequently, constraining agency behavior can be difficult, and in many instances, public accountability is weak. Efforts to reform the rulemaking process must address this fundamental concern. Reforms that require cost-benefit analysis and risk assessment are an important step towards more reasonable regulations, but these efforts must be reinforced with statutory changes that alter regulators' incentives and limit bureaucratic discretion. Judicial review and a broad scope of applicability for reform measures would increase accountability by changing the underlying rules of the game. And efforts to monitor and evaluate agency progress over time provide a greater degree of accountability that should make agencies more responsive to small businesses and the public in general. It should be noted that in a December 5, 1994 report on the National Performance Review's first round of reforms, the General Accounting Office found that only one of the eleven recommendations made in September 1993 had been fully implemented.<sup>8</sup> This Committee's oversight can help ensure better results with the latest round of regulatory reforms.

Whether federal agencies rely on sound science and objective cost-benefit analysis should not be a political decision. The American public has paid more than \$1.5 trillion to comply with federal regulations over the past twenty-five years--it is incumbent upon the government to ensure that this money has not been squandered and that any future investments in health and safety regulations will be guided by sound principles. I urge the Small Business Committee to move forward with its efforts to monitor and measure regulatory reform.

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<sup>8</sup>See, General Accounting Office, "From Red Tape to Results: Creating a Government that Works Better and Costs Less," Washington, D.C., December 5, 1994.



The Regulatory Report Card		
Executive Order 12866		
General Compliance	Are rules justified?	Grade:
	Risk Assessment	
	Market-based Rules	
Reinventing Government		
General	Number of obsolete regulations identified	Grade:
	Number of lower cost alternatives identified	
	Number of issues shifted to state and local governments	
	List rules identified for modification or elimination	
EPA	Open-market air emissions trading	Grade:
	Effluent trading in watersheds	
	Risk-based hazardous waste regulation	
	Risk-based drinking water treatment requirements	
	Expanding the use of risk assessment	
	25 percent reduction in paperwork	
	One-stop emission reports	
	Risk-based enforcement	
	Incentives for auditing, disclosure and correction	
	Self certification	
OSHA	Participation level in on-site consultation and voluntary protection programs	Grade:
	Number of focused inspection programs	
	Number of compliance incentive programs	
	Number of rules reviewed	
	Number of rules eliminated	
	Number of rules modified	
	Number of design standards changed to performance standards	
	Changes in citation levels	
FDA	Review times for medical products	Grade:
	Restrictions lifted on dissemination of scientific information	
	Exemptions from premarket notification for medical devices	
	Simplification of General Manufacturing Procedures	
	Reduces paperwork burden	
Paperwork Reduction Act of 1995		
Implementing the Paperwork Reduction Act of 1995	Implementing regulation issued	Grade:
	Agency paperwork burden baseline established	
	"Bootleg" information collection identified and remedied	



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TESTIMONY OF  
NATIONAL FEDERATION OF INDEPENDENT BUSINESS (NFIB)

Witness: Mark Isakowitz  
Director, Federal Governmental Relations, House

Subject: The Clinton Administration's Regulatory Reform Initiatives

Before: House Committee on Small Business

Date: July 18, 1995

Madam Chairman, my name is Mark Isakowitz and I am the Director of Federal Governmental Relations in the House of Representatives for the National Federation of Independent Business (NFIB). NFIB is the nation's largest small business advocacy organization, representing more than 600,000 small business owners in all 50 states and the District of Columbia. The typical NFIB member employs five people and grosses \$250,000 in annual sales. NFIB's membership mirrors the nation's industry breakdown with a majority of its members in the service and retail sectors.

I want to thank you Madam Chairman and the committee for having me here at this oversight hearing to discuss one of the most frustrating and aggravating problems facing small business owners today -- government paperwork, red tape and regulation.

There is a lack of consensus on a great number of issues facing this country. But there is growing bipartisan agreement about a phenomena that is taking place in America's small business sector -- the burden created by federal regulation falls predominantly and disproportionately on the very people who we rely upon to create jobs, small business owners. To that end, I would like to focus on four topics today. First, I will describe to the committee the frustration of dealing with regulations. Second, I will give an overview of NFIB's legislative agenda in the regulatory area. Third, I will discuss NFIB's views on the Administration's regulatory relief initiatives. And finally, I will address the question you have posed -- how do we best design a "Report Card on Regulatory and Paperwork Reduction" that best assesses whether regulatory relief initiatives are working.

### **The Costs and Horrors of Regulations**

Small business owners across this country are being trampled by the costs and burdens associated with regulations. The evidence is abundant and also easily convincing. NFIB has gathered it from our own research, others in Washington researching this issue, and most importantly from individual members who are struggling to comply with the federal government's web of regulations.

The NFIB Education Foundation, NFIB's research arm, published in 1992 an extensive survey entitled "Small Business Problems and Priorities". It looked at and ranked the top 75 problems facing small business. And to the surprise of many, problems relating to regulation and government paperwork were the fastest rising area of concern in the entire survey.

Another NFIB Education Foundation study ("New Business in America") clearly illustrates the impact regulations have on new businesses, which create about one-third of the new jobs in the economy. The study found that of all the challenges faced by a new business, owners are least prepared to deal with government regulations and red tape, and are generally surprised by the extent to which government plays a role in their business.

When looking at the data it is easy to see why regulations are the fastest growing concern to small business owners. The dead-weight loss to society from regulation is estimated to be more than \$1 trillion dollars per year. By dead-weight I mean that the losses due to regulation exceed the benefits of the regulation by more than \$1 trillion per year.

According to studies done by Thomas Hopkins of the Rochester Institute of Technology, and William G. Laffer, III and Nancy Bord of the Heritage Foundation, the direct costs of regulatory compliance to businesses that are associated with regulatory compliance are somewhere in the range of \$500 billion to \$800 billion dollars. The current Administration pointed out in its National Performance Review that the compliance cost imposed by federal regulations on the private sector were at least \$430 billion per year or 9 percent of GDP.

Complying with regulations costs our economy dearly. The hidden tax of complying with regulation is no less a tax than any other government levy. And when it comes to businesses, this hidden tax is regressive; it hits the "little guy" the hardest.

There are several reasons why smaller businesses bear a heavier regulatory burden than larger businesses. One reason has to do with the fixed cost aspect of regulation. Almost all regulations have some fixed costs. Fixed costs are independent of output, i.e., any company affected by the regulation pays the same fixed cost. An example of fixed costs would be a requirement that every firm complete a lengthy quarterly report submission to a regulatory agency. It would cost every firm the same amount to complete the report. But larger firms can spread the fixed costs over large quantities of output. The average fixed cost or fixed cost per unit of output is low, therefore, it has only a small effect on price. The smaller company with the same fixed cost, but lower levels of output, has a much higher fixed cost per unit of output. If the smaller firm passes the cost on to the consumer by raising prices, fewer will buy the product at the higher price and profits will fall.

This is a technical explanation, but simply put, small business because of economies of scale is not equipped to deal with federal regulations. Walk into any small business and look for the accounting department, the legal counsel, or the human resources division. You will not find them.

Unfortunately, the case I just made has never been understood by bureaucrats. The avalanche of regulation continues to pummel the small business owner. Case in point, there were 64,914 pages in the Federal Register in 1994, this is compared to 44,812 pages in 1986 -- an increase of 20,102 pages. Just remember how small the print is on each page of the Federal Register and one can begin to conceptualize the burden of the regulatory avalanche.

## Small Business Legislative Agenda

Over the past six-months, NFIB has been working hard to see that regulatory relief is being undertaken by Congress. In the first one hundred days NFIB members from across the country flooded members of Congress with pleas for reducing the government regulatory burden.

NFIB fully supported the regulatory reform proposals in the Contract With America and applauded the House for taking the first big step in easing regulations on small business.

For many years NFIB members had been calling for many of the legislative initiatives found in the Contract With America. No single issue exemplifies this as that of reform of the Regulatory Flexibility Act.

The Small Business Regulatory Flexibility Act was enacted in 1980 to help ease the regressive impact of "one-size-fits-all" regulations on small business. It was intended to force regulators to consider the differences between big and small businesses and to reduce the burden on small businesses. Unfortunately, the Regulatory Flexibility Act doesn't work because there is no way to challenge the compliance of the regulators in court.

The House passed legislation that would solve this problem by instituting a judicial review component for the Reg-Flex Act. With judicial review regulators would have to think twice when they try to exploit loopholes in the Regulatory Flexibility Act--or they will get taken to court.

Another initiative passed in the first one hundred days was the Paperwork Reduction Act. Small business for years has been asking for relief from the avalanche of paperwork. This legislation, signed into law by the President, will go along way in answering cries from small business owners for help from the paperwork nightmare.

Beyond these two very important regulatory reforms, the House passed several other pieces of legislation to streamline regulation. For example, the House passed important private property rights protections legislation and restricted government takings of private land. The House also passed legislation to require regulators to use risk assessment/cost benefit analysis or a regulatory impact analysis when writing their rules. And finally, the House passed a much needed regulatory moratorium that requires agencies to stop and review what they are doing in the regulatory arena.

Small business across this nation applauds what the House has accomplished in such a short time period. They now wait in anticipation for the Senate to follow suit and bring much needed regulatory relief through legislation.



## Administration's Regulatory Initiatives... The good with the bad.

### The Good

While much has been done to streamline regulations from Capitol Hill, the Administration has put some initiatives forward to reduce regulations. The President deserves credit for recently improving the tone of the Administration on regulatory reduction. In September 1993, the President issued Executive Order No. 12866 on Regulatory Planning and Review which called upon all the agencies to ease the burdens of regulations on the entire regulated community. This E.O. was to be done through directives that called upon regulators to precisely follow existing administrative laws and procedures, to use cost/benefit analysis and risk assessment and to use market based incentives.

As a follow-up to E.O. 12866 the President also issued a memo in March of this year for heads of department and agencies regarding his Regulatory Reinvention Initiative. In this memo the President called on agency heads to do a number of things to ease the burden of regulations. The President requested that regulators first, cut obsolete regulations; second, reward results not red tape; third, get out of Washington and create grassroots partnerships; and, fourth, negotiate, don't dictate. The President also asked the agency heads to "think about other ways to promote better communication, consensus building, and less adversarial environment and to send their thoughts to the Vice President."

Some other positive developments have come from the Administration including the President's signing of the long awaited Paperwork Reduction Act. As previously stated, this law will do much to relieve small businesses paperwork headaches.

Some (but not all) agencies have taken steps to adhere to the President's request. The Environmental Protection Agency has also contributed to the regulatory streamlining process over the last several months. Positive initiatives from the EPA include expanding state small business ombudsmen offices to facilitate compliance with all environmental regulations, giving small business a six month grace period to comply with regulations and establishing sector specific centers with 1-800 lines and computer networks that businesses can access to receive assistance on details of how to comply with environmental regulations.

All of these goals send a positive tone and are laudable goals that small business would welcome.

### But...the Bad

The Administration's regulatory initiative can be summed up best this way -- Good Tone vs. Poor Reality.

Unfortunately, in reality, the wave of regulations is still coming. The President admits it himself in his March memo to agency heads regarding E.O 12866. It states "... not all agencies have taken the steps necessary to implement regulatory reform."

The Administration's tone versus what is actual reality is illustrated best by a recent Washington University study which shows that the President's 1996 budget calls for a 6.3 percent increase in spending on regulatory programs. The study goes on to show that the number of federal regulators will hit an all-time high.

While these numbers do provide a stark statistical illustration of the today's regulatory reality, many NFIB members and small business owners have lended credence to these statistics. In the most recent data available from the NFIB Education Foundation's monthly "Small Business Economic Trends," taxes and regulations were the top two problems facing small businesses in America. Moreover, the small business owners were asked to rate the Administration's on economic policies. Forty-six percent of respondents gave the Administration a "poor" rating while only one percent gave the Administration an excellent rating.

Furthermore, just last month small business owners from around the country gathered in Washington for the White House Conference on Small Business. Five of the top ten recommendations from the small business owners had to do with reducing government red tape and paperwork.

#### Examples

With all this evidence in their hands and directives from the President agencies in this Administration continue the onslaught of oppressive regulations. There are many examples I could use but here are just a few examples of regulations that continue to flourish:

- One such example comes from small businesses least favorite agency -- The Internal Revenue Service. Small business owners are telling us that this problem is getting worse: fixing it was the top recommendation from the White House Conference on Small Business. The issue in question deals with classifying workers as employees or independent contractors.

For more the twenty years the IRS has run roughshod through small businesses doing audits to see if workers have been misclassified as independent contractors. The guidelines regarding what constitutes a independent contractor are so vague they are hard for many small businesses to follow. In fact, the vagueness occurs because IRS weighs the 20 common law tests for independent contractors differently in each individual case.

To make matters worse, the IRS levies heavy back tax penalties when it determines a company has wrongly classified an employee as an independent contractor. These fines are levied even if the mistake was unintentional, the employer fully reported all payments to the independent contractor, and the contractor paid all applicable taxes. The IRS is currently taking on all trucking companies in Houston on this issue. (NFIB fully supports legislation introduced

by Congressman Jon Christensen to clarify the definition of independent contractors and we urge all members of Congress to cosponsor the bill, H.R. 1972)

- Another example of current regulatory hand grenades comes from the Department of Labor, primarily OSHA. Three excessive regulations are continuing through the regulatory process -- even in this "Regulatory Reinvention" era. The first one deals with a regulation to regulate indoor air quality. The regulation requires that business implement compliance programs, and provide detailed recordkeeping of maintenance records for building systems among other things. NFIB has studied the proposed regulations and has determined that it would be particularly difficult and costly for small businesses to comply with.

OSHA is also working on a rule that would address repetitive motion injuries. Employers would be required to have written plans to prevent these injuries and to redesign work areas, to slow assembly lines and potentially to pay for medical bills. Private industry estimates show this rule would cost the private sector \$21 billion to implement. In recent testimony before Congress, OSHA Administrator Joseph Dear said the agency is moving forward with an ergonomics rule.

- As for other agency problems, the Environmental Protection Agency continues to implement rules that call for using "best available technologies" for environmental cleanups. This concept, used in the Clean Water Act, Clean Air Act, and RCRA, among others, requires that business owners use the best available technology possible to make their water, air, or waste emissions as clean as possible. There is no consideration of cost under this standard. That is, if a better technology comes along that reduces the level of toxin by one part per trillion, even this really has no appreciable benefit in terms of reduced health risk, the new technology must be used, even if it costs ten times as much.

- Some of the Administration's tone on regulations inside the beltway have not yet reached the regulators outside the beltway. For example, the President recently announced steps to make OSHA inspectors more consultative and helpful. Right around the same time the President made this announcement, NFIB member Norman Barnard testified before Congress and said the following:

"In order to move my three security small businesses from the 20th century into the 21st century and provide for the safety needs of my employees, I need a program of training, education, consultation and cooperation. I do not need to be told by my local OSHA Agency to "go look it up in the public library," which is what I heard from OSHA only last week after asking if any safety pamphlets or literature were available".

This quote illustrates that inside the beltway announcements do not necessarily change the regulatory climate outside the beltway. It takes work.

On the legislative front, the President has sent a very bad signal by promising to veto broad regulatory reform legislation in the Senate that NFIB members fully support and have been calling for more than a decade.

Yes, it is true that regulatory relief can be accomplished through agency alterations, but the best way to accomplish true reform is by changing the process through legislation. NFIB members believe the regulatory reform passed in the Contract With America and the regulatory reform issues being debated in the Senate are the best approaches to halting the regulatory freight train.

### **Proposals for a Regulatory Report Card**

We've discussed options on how best to accomplish regulatory reform, but the real crux of why we are here today is to talk about accountability -- seeing if what set forth becomes reality.

The following is some suggested ideas about how best to evaluate regulatory relief initiatives and how to hold agencies accountable in the eyes of everyday American citizens.

**1. Legislative Proposals and Actions** - It is one thing to set a good tone in the executive branch for trimming down regulation, but it is also another thing to introduce or support legislation that adds regulations to the books. Legislative proposals by the Administration should be judged based on whether they add to or take away from the regulatory burden.

**2. Oversight Hearings** - Chairwoman Meyers has set a good precedent in beginning this process here today -- a dialogue of accountability. It is important that on a regular basis oversight hearings are held on specific regulations, with specific regulators and agency heads testifying. The President's March 1995 memo is a good starting point for accountability in these oversight hearings and all agency heads should be held accountable for the initiatives outlined in the President's March 1995 memo.

**3. G.A.O. Study of Compliance with the Regulatory Flexibility Act(RFA)** - Require the General Accounting Office to perform a study that details agency by agency compliance with the RFA. They should do case studies that evaluate regulatory flexibility analyses to determine agency compliance with the spirit of the laws. Since the Act was enacted in 1980, regulators have ignored the Acts requirements because of a lack of judicial review.

**4. Outside the Beltway Survey** - Ask all business groups or GAO to conduct a survey of small business members by a date certain on the regulatory climate. This would give agencies a reality check to see how any regulatory relief initiative is working in the real world. This is an important element of any regulatory report card.

**5. Regulatory Sunset and Review** - By sunseting and review regulations, federal agencies would have to justify the existence of regulations and in effect provide a report card on regulations themselves. With this single proposal, much of the accountability we are discussing today would be accomplished.

**6. Collect A Report Card From Every Agency** - Require that the Administrator of the Office of Information and Regulatory Affairs collect information based on President Clinton's March 1995 memo. To date there has been little evidence that agency heads have followed his instructions. In fact, no evidence has been presented to indicate that agency heads responded by the President's June 1, deadline.

**7. Agencies Should Utilize Corrections Day** - Speaker Gingrich has come up with a great idea of how to do away with outrageous regulations. If agency heads find outdated or outrageous regulations that can only be discontinued through the legislative process, they should propose it for a Corrections Day fix.

## Conclusion

Madam Chairman, NFIB small business owners spoke loudly last election and they continue to shout for help. Their message to Washington is plain and simple -- **get government off our backs and out of our pockets** so we can do what we do best: build businesses, create jobs, provide for our families and make meaningful and constructive contributions.

Regulatory relief initiatives can be proposed and vanish in the sunset of this town without making a fingerprint on the walls of America's small businesses. It is imperative that we have an accountability standard in this country for the regulatory juggernaut that continue to haunt small business. Without any accountability, regulations will stagnate this country's job creators - small business.

Thank you Madam Chairman for your leadership on this issue and for holding this important hearing and we look forward to much more dialogue like we have had today.



STATEMENT OF SALLY KATZEN  
ADMINISTRATOR  
OFFICE OF INFORMATION AND REGULATORY AFFAIRS  
OFFICE OF MANAGEMENT AND BUDGET  
BEFORE THE  
HOUSE COMMITTEE ON SMALL BUSINESS

July 18, 1995

Good morning, Madam Chairman and Members of the Committee. I am pleased to be here today to talk about the efforts that the Clinton Administration has undertaken to decrease regulatory burden on small business.

Since taking office, this Administration has been strongly committed to reforming our regulatory system so that agencies produce fewer, less costly, and more effective regulations. While this principle applies across the board to all sectors of the economy and to all types of regulated entities, we recognize that government regulations -- and their accompanying paperwork -- often have a disproportionate impact on small business and, for that reason, we have made a special effort to make regulations more flexible and less costly for small business.

In September 1993, the President signed Executive Order 12866, which set forth the Administration's regulatory philosophy and established processes to ensure more rational regulations. The Order calls for the use of good data and sound science; better analysis of proposed regulations, including consideration of alternatives to regulation and cost/benefit and risk analysis; increased public outreach and involvement; and the use of market incentives and performance standards rather than command-and-control techniques. More specifically, the Order directs that special attention be given to small businesses: "[e]ach agency shall tailor its regulations to impose the least burden on society, including . . . businesses of differing sizes," signaling our commitment to focus on the concerns of small businesses.

In early 1994, Erskine Bowles (then Administrator of the Small Business Association) and I convened the Small Business Forum on Regulatory Reform, which brought together regulated businesses and regulating agencies to develop comprehensive proposals to reduce regulatory burden. The work of the Forum focused on six agencies and their interactions with the small business community: the Internal Revenue Service, the Food and Drug Administration, the Department of Transportation, the Environmental Protection Agency, the Department of Labor, and the Department of Justice. Over 150 small business representatives and 80 government employees met during the spring of 1994 and produced for the Forum a detailed list of findings and recommendations, many of which are already being implemented by the participating agencies. These included, for example, the need for better coordination among federal agencies to reduce overlapping or conflicting requirements; more involvement of small businesses in the regulatory process; and less adversarial relationships between federal regulatory enforcement officials and small businesses.

Building on the spirit of the Forum, my office and SBA's Office of Advocacy discussed ways we can improve coordination and cooperation between our offices. On January 11, 1995, Jere Glover (SBA's Chief Counsel for Advocacy) and I exchanged letters describing how we can assist each other regarding agency compliance with the Regulatory Flexibility Act.

Most significantly, last October, President Clinton asked Vice President Gore to convene a series of regulatory reform sessions with the various federal agencies to identify and implement bold ideas for reform in both cross-cutting and sector-specific areas. One of the sessions was devoted to proposals designed to help small business. Some of these initiatives have already been made public as part of the White House Conference on Small Business.

For example, SBA described the substantial steps that it has taken in the last two years to expand access to credit through regulatory reform, including:

- **Low Documentation (LowDoc) Loan Program.** The paperwork and red tape associated with small SBA-guaranteed loans used to be an embarrassment. Today, the LowDoc Program features an easy, one-page SBA application and a rapid response, usually within two or three days, for loans up to \$100,000. Early reports show that loans made under the program are performing at a better rate than those made during the same period under the regular 7(a) program.
- **The FA\$TRAK Program.** On February 27, 1995, SBA launched a two-year pilot program called FA\$TRAK that permits selected lenders (who share risks with SBA on a 50/50 basis) to approve and service loans up to \$100,000, while using their own forms, documentation, and procedures.
- **Repeal of Opinion Molder Rule.** The so-called opinion molder rule -- adopted in 1953 to address concerns regarding federal agency involvement in potential prior restraint of speech -- prevented small media entities such as booksellers, radio stations, and television production companies from receiving SBA loan assistance. Rather than try to patch up the rule, SBA eliminated it entirely, thereby extending loan eligibility to approximately 75,000 media-related small business entities it could not previously serve.
- **Reinvention of the 504 Business Development Program.** SBA's 504 program, which provides asset-based financing for small businesses, historically has required cumbersome, resource-intensive review procedures. SBA is streamlining the entire process from authorization to closing. In April, SBA

instituted the first phase, an expedited closing review process, which has reduced the time required for SBA counsel's involvement in the closing process by 80 percent.

SBA is also leading efforts to create a "one-stop" electronic point of contact for all government business, economic, and regulatory information that small businesses need to make informed decisions. This "U.S. Business Advisor" is now in the pilot stage and, if well received, will be made available nationwide.

Small business initiatives were also considered in the sector-specific sessions with the Vice President. Some of these include:

- o **Environmental Reform.** In March, the Administration announced several initiatives being undertaken by the Environmental Protection Agency. Among other things, EPA will: reduce its paperwork burdens by 25 percent; institute a "one-stop" emissions reporting program; give small businesses a six-month grace period to correct violations; provide incentives for self-disclosure and correction of violations; and create a self-certification program, beginning with pesticides.
- o **Drugs and Devices.** In April, we announced that the Food and Drug Administration will: allow manufactures to make certain changes to drugs without prior FDA approval; exempt certain categories of medical devices (such as syringes and oxygen masks) from prior approval requirements; eliminate environmental assessments for certain drugs and biologics; and harmonize international standards for the review of drugs and medical devices.

- o **The "New Occupational Safety and Health Administration".** In May, the Administration unveiled "the New OSHA," changing its fundamental operating paradigm from one of command-and-control to one that provides employers a real choice between partnership and a traditional enforcement relationship. One initiative that OSHA will pursue is nationalizing its "Maine 200" program that builds partnership between companies and OSHA regulators in order to improve worker health and safety in a less burdensome manner. In Maine, the results were impressive: nearly six out of ten employers in the program reduced their injury and illness rates, even as inspections and fines were significantly diminished. OSHA will expand the most successful features of this program nationwide.
- o **Simplified Tax and Wage Reporting.** On June 9, the President announced the Simplified Tax and Wage Reporting System (STAWRS) -- developed by the Internal Revenue Service, the Social Security Administration, and the Department of Labor -- that will significantly streamline wage and income reporting requirements and eventually lead to a system of single electronic filing with federal and state governments.
- o **Pension Simplification.** Currently, only approximately 24 percent of employees of small businesses (those with 100 or fewer employees) are covered by employer retirement plans -- to a great extent because of the complexity and prohibitive costs of establishing such plans. In June, the President announced a pension simplification proposal that would provide small business with a new, simple retirement plan that would be known as the National Employee Savings Trust, or "NEST." The NEST would operate through individual IRA accounts for employees, and would incorporate the most attractive features of the 401(k) plan, the fastest growing employer retirement plan in America today. The President's proposal would also eliminate or simplify many of the rules



that currently apply to other types of employer retirement plans. For example, it would repeal the family aggregation rule that greatly complicates testing of retirement plans, particularly for family-owned and operated businesses. By reducing complexity and costs, small businesses that want to provide retirement benefits for their employees will now be able to do so.

- o **Health Care Financing Administration.** On July 11, the Vice President and First Lady unveiled a series of health care regulatory reforms from HCFA (within the Department of Health and Human Services). The changes include cutting burdensome paperwork requirements such as the Physician Attestation Form (a Medicare paperwork requirement that must be completed by a physician each time a patient is discharged from a hospital). HCFA will also reduce burden and improve the Clinical Laboratory Improvements Amendments (CLIA) system by rewarding good performance by laboratories, creating incentives for manufacturers to develop more reliable testing equipment, approving private organizations that meet certain standards to accredit laboratories, and using proficiency testing as an outcome measure to monitor laboratory performance. HCFA will also change current regulations in order to focus more on measuring outcomes of patient care, rather than ensuring that process requirements are met. In addition, a standard claim form will be used for federal employee health care plans.

In addition to these sector-specific initiatives, the President has made a series of regulatory reform policy announcements, many of which will be very beneficial to small businesses. On February 21, he covered four concepts:

First, the President directed the major regulatory agencies to conduct a page-by-page review of their existing regulations to

determine which should be eliminated and which should be streamlined, simplified, updated, overhauled, or otherwise improved. Initial reports show that these agencies will eliminate over 16,000 pages of the Code of Federal Regulations (almost 20 percent of their base), and will reinvent the regulations in over 31,000 additional CFR pages (over 35 percent of the base).

Some of this work has already been completed; for example, the Department of Education, this past May, eliminated 88 entire Parts of the Code of Federal Regulations, totaling nearly 400 pages and representing more than 30 percent of its existing regulations. Also in May, the Department of Health and Human Services deleted 38 percent of its regulation pages. And last month, the Department of Energy published a final rule that eliminated 15 percent of the Department of Energy Acquisition Regulation (DEAR) -- on top of 10 percent that it had eliminated last year.

Other proposals still need to go through notice and comment (in keeping with the Administrative Procedure Act). The President and Vice President have directed agency and department heads to make implementation of their commitments a priority, and most agencies already have in place aggressive schedules to do this. The Small Business Administration, for example, has committed to eliminate or improve 100 percent of current SBA-specific regulations by the end of 1995 -- with a total reduction in their pages of regulations of more than 50 percent. By next year, DOE will have eliminated another 25 percent of the DEAR (bringing the total to 50 percent), and the remaining procurement regulations will be reinvented to reflect performance-based measures and best business practices. And, in order to expedite the rulemaking process, we have asked agencies to use interim final rules and direct final rules for eliminations that are non-controversial.

Many of the agency proposals for eliminations and reinventions can be accomplished administratively; for others, legislative action will be necessary. For example, the Department of Commerce is supporting changes that would make implementation of the Fastener Quality Act less costly, while providing the same level of protection. (The Fastener Quality Act seeks to protect public safety by requiring that certain fasteners -- i.e., nuts and bolts -- sold in commerce conform to the specifications to which they are represented to be manufactured.) The Department of Transportation has suspended, and proposed legislation to permanently make discretionary, pre-employment alcohol testing (a change that is expected to save the motor carrier, mass transit, aviation, and railroad industries \$28 million a year). And the Department of Housing and Urban Development has proposed legislation that would consolidate HUD programs and decrease regulatory burdens. If the proposal is enacted, HUD projects that it would eliminate well over half of its pages in the Code of Federal Regulations.

The second part of the President's February 21 directive emphasized **rewarding results, not red tape** -- in other words, agencies were directed to change the way that they measure their performance so that the focus is on results, not process and punishment. In response, the agencies have reviewed their appraisal systems and are making changes to promote this principle. SBA, for example, has committed to putting new performance standards in place by October 1, 1995, under which SBA employees will focus on aid and assistance to small business. And several other agencies have identified specific performance measures that focus on process, punishment, and numbers -- and they are replacing these with new measures that focus on results and overall goals.

The President's third directive was to **get out of Washington and create grassroots partnerships**. Agencies were instructed to

convene groups of front-line regulators and affected citizens at sites throughout the country, rather than have lawyers here in Washington talk to other lawyers in Washington. I am pleased to report that agencies have held well over 300 grassroots meetings across the country since February 21. Agency and department heads and other top officials have participated in most, if not all, of these meetings, allowing them to hear directly from the regulated community so that they might better understand the problems with the existing system. For example, the Administrator and Deputy Administrator of EPA have met with hundreds of stakeholders across the country since March. And, in this same time period, the Department of Labor's Assistant Secretaries have held over 100 meetings with front-line regulators, stakeholders, and industry officials.

While every agency has engaged in such face-to-face meetings, their efforts have not been limited to this approach. Many, if not all, are also taking advantage of new technologies in pursuing such partnerships. Education, for example, uses satellite broadcasts, electronic bulletin boards, and teleconferencing to reach out to its customers; it also now invites comments on all proposed rules through Internet. And the U.S. Business Advisor, which I mentioned earlier, is an excellent example of this Administration's effort to use information technology to enable one-stop service for Americans trying to deal with their government.

Fourth, the President instructed agencies to negotiate, don't dictate -- to work with the regulated community during the development of regulations to promote a better understanding of the issues and develop a less adversarial environment. The agencies have identified several dozen negotiated rulemakings that are either underway or planned for the future. For example, the Department of Agriculture is considering reg-negs for a WIC (Women, Infant, and Children) funding formula rule, a wetlands-

related rule, and an Animal and Plant Health Inspection Service rule on non-indigenous plant pests. The Department of Transportation, the first agency to use reg-negs over a decade ago, is using reg-neg in a Federal Railroad Administration rule on roadway worker safety and a Federal Highway Administration rule concerning commercial drivers licenses.

In addition, the agencies, across the board, are greatly expanding their use of consensual forms of rulemaking (short of formal reg-neg). In fact, outreach to the public has never been more extensive, and the agencies are employing new and creative ways to involve the public in the rulemaking process. For example, the Department of Transportation has begun holding many of its public meetings during the evenings and on weekends to allow for increased participation. The agencies are also using means other than traditional rulemaking to accomplish desired goals. The Department of Energy, for example, has developed a program -- called the "Climate Challenge program" -- to achieve cost-effective greenhouse gas emission reductions through voluntary participation by individual electric utilities. This program relies on cooperation between electric utilities and DOE, rather than command and control regulation, with the electric utilities voluntarily committing to undertake actions to reduce, avoid, or sequester greenhouse gas emissions. DOE provides technical assistance, encouragement, and public recognition for utility participants. The program was developed by means of negotiations between the Department and interested industry groups -- as memorialized in a Memorandum of Understanding that was signed in April 1994.

In March 1995, the President made two other announcements that were especially focused on small businesses. First, he directed agencies to waive up to 100 percent of any punitive fine if the small business corrects the violations within an appropriate time period. The government also will offer small



businesses an opportunity to avoid punitive action by applying any fine actually levied towards correcting the violations leading to the fine. (These policies apply to first-time violations and those that do not threaten safety and health or involve criminal wrongdoing.)

Agency response to this directive has been enthusiastic. The National Oceanic and Atmospheric Administration (within the Department of Commerce) has developed a new regulatory enforcement regime in which first-time violators and those making a good faith effort to comply will be issued a "Fix It" ticket or an oral warning, rather than a citation or monetary penalty for certain regulatory violations. Similarly, the Coast Guard (within the Department of Transportation) authorizes its personnel to issue warnings, rather than impose penalties, for minor violations that are corrected promptly. It recently implemented a "pollution ticket" program that offers a significantly reduced penalty for first and second time minor violation of some environmental requirements. And the Federal Highway Administration imposes penalties only as a last resort when other means of obtaining compliance (such as education and training) have failed. Even then, FHWA's penalty authority is to be exercised in ways that take into account an entity's ability to pay, meaning that FHWA will assess smaller penalties against small businesses in many cases.

The President also directed that many regularly scheduled reports to the federal government now be required only half as often (i.e., quarterly reports will be semi-annual; semi-annual reports will be annual). Among the agency actions that are in keeping with this directive are:

- EPA has committed to reduce by 25 percent the burden imposed by existing monitoring, recordkeeping, and reporting requirements. To date, it has identified 39 reports that

will issued half as often. EPA hopes to meet its overall goal by June 30, 1996 and expects it to save the regulated community approximately 20 million reporting burden hours annually.

- The National Highway Traffic Safety Administration (NHTSA) will propose repeal of the law requiring insurers to submit annual reports of their theft claims (which is NHTSA's most time-consuming report imposed on the public).
- In 1993, the EPA promulgated a rule aimed at reducing the risks posed by perchlorethylene emissions from dry cleaners. This rule included recordkeeping requirements for all dry cleaning facilities. However, in recognition of the burden this would impose on small businesses, this reporting requirement was cut in half for the smallest dry cleaners.
- And Energy has reduced reporting burden on contractors by tossing out three large notebooks filled with 7,000 detailed reporting requirements, and replacing them with an 11-page document; this action will result in estimated annual savings of \$48 million.

The effects described above are essentially de-regulatory in nature. There are, in addition, continuing efforts to ensure that, where regulations are needed -- and this Administration recognizes that some regulations are, indeed, necessary to protect our health, safety, and the environment -- they are as tailored as possible, as cost-effective as possible, and that they take into account, among other things, the concerns of small business.

Some examples of sensible and focused regulations that have been developed during this Administration include:

- The FDA recently developed interim rules under the Mammography Quality Standards Act of 1992 so as to impose the least burden on mammography facilities, which are nearly all small entities. The interim rules incorporated existing standards to the maximum extent possible, provided for the issuance of federal certificates to facilities already accredited by the American College of Radiology, and required facilities to submit certification information only to an accrediting body and not to FDA.
  
- Various agencies have created exemptions or thresholds to exclude small businesses from certain regulatory requirements. For example:
  - Last year, DOJ's Immigration and Naturalization Service exempted smaller airlines -- those collecting less than \$50,000 per month -- from a monthly reporting requirement regarding the collection of immigration user fees.
  
  - The Treasury Department has created a \$3,000 threshold for rules relating to recordkeeping for wire transfer transactions, which has the effect of excluding as many as 98 percent of all transactions carried by non-bank money transmitters, many of which are small businesses.
  
  - Most of the regulations of the Federal Railroad Administration (within the Department of Transportation) apply only to railroads that are part of the general railroad system (not plant railroads and other small operations). And portions of FRA's rules on alcohol and drug testing exclude from their coverage railroads with fifteen or fewer employees in safety-related service.

- And Treasury is in the process of simplifying the current rules for classifying unincorporated business organizations either as partnerships or as associations taxable as corporations. This would aid numerous small unincorporated businesses that cannot afford to commit significant time and resources to cope with the current complexity.
- Another good example of common sense regulating is the effort by the Commerce Department's Bureau of Export Administration to completely rework its existing export regulations. The goal is to eliminate complex requirements and make the regulations more understandable to all users, including small business exporters. In revising these regulations, Commerce is also flipping the presumption that a license is required for all exports absent an exemption -- to one in which no license is required unless specifically stated. This will make it easier for exporters -- especially small businesses -- to find markets abroad. The comment period on the proposed rule closed on July 10; Commerce is in the process of reviewing the comments and expects to publish a final rule by mid-October.

Also contributing to this common sense approach to regulating is one of the initiatives from the Vice President's reinvention effort -- the requirement that a political appointee read every regulation; if a businessman, state or local officials, or individuals must read and abide by a given regulation, it is well worth the time of the appointee to ensure that the regulation is sensible and understandable.

#### Legislative Efforts

There have also been a series of accomplishments on the legislative front that the Administration has strongly supported.

- **Paperwork Reduction Act of 1995.** To further curb the government's appetite for paper, the President, on May 22, signed the Paperwork Reduction Act of 1995, which strengthens the 1980 Act and calls for federal agencies to reduce their paperwork requirements by ten percent per year in 1996 and 1997 and by five percent per year thereafter. At the signing ceremony, the President also called upon the agencies to accept electronic filings of forms and reports in lieu of paper or explain to the Office of Management and Budget why electronic filing is not appropriate.
- **Procurement Reform.** In the past, small businesses were hindered from fully entering one of the larger domestic markets -- the federal government -- because of government's complex and burdensome procurement process. The Federal Acquisition and Streamlining Act of 1994 simplifies procedures for federal procurement of commercially available goods, promotes the development of computer networks for conducting procurement electronically, and provides additional flexibility in awarding and financing government contracts.
- **Unfunded Mandates Reform Act.** The President also signed into law the Unfunded Mandates Reform Act, which requires agencies to consult with state, local, and tribal governments before issuing regulations that impose unfunded mandates. It also covers the private sector and requires cost-benefit analysis and a consideration of reasonable alternatives for significant regulations.
- **Interstate Banking Deregulation.** This legislation, which had been languishing in Congress for more than a decade before the Clinton Administration made it a priority, eliminates most of the remaining barriers to efficient



nation-wide banking by allowing banks to locate branches across state boundaries.

- **Intrastate Trucking Deregulation.** The Administration championed extending the interstate deregulation of the trucking industry to intrastate trucking, which will result in significant savings to shippers and consumers.

We are proud of our accomplishments and believe that even this illustrative list is impressive. We believe that this is the right way to reform regulations and the regulatory system. We recognize that there is more to do -- much more. The current situation was not created overnight, and it will not be cured overnight. But with constructive, bipartisan support, we expect to continue to make substantial progress.

Thank you, Madam Chairman. I am happy to answer your questions.

**STATEMENT**  
**on**  
**SMALL BUSINESS and the CURRENT REGULATORY CLIMATE:**  
**IMPROVEMENT or STATUS QUO?**  
**before the**  
**HOUSE COMMITTEE ON SMALL BUSINESS**  
**for the**  
**U.S. Chamber of Commerce**  
**by**  
**Jeffrey H. Joseph**  
**July 18, 1995**

Chairman Meyers and members of the Committee, I am Jeffrey H. Joseph, Vice President, Domestic Policy, for the U.S. Chamber of Commerce. The Chamber counts among its membership 215,000 businesses, 3,000 state and local chambers of commerce, 1,200 trade and professional associations, and 72 American Chambers of Commerce abroad. I would note that of the Chamber's 215,000 business members, ninety-six percent have fewer than 100 employees. As an overwhelmingly small business organization, we are pleased to have this opportunity to represent the vast majority of our membership that struggles daily with the burdens of federal regulations. You and this Committee are to be commended for the regulatory initiative you begin here today. The Chamber is pleased to be participating in this critical endeavor and our hope is that this is the first of many such efforts to introduce accountability into the federal regulatory process and its agents. For too long, oversight of federal agency actions has been lacking, so one might even call this hearing the beginning of historical change!

Two issues are at the center of the regulatory debate. First is federal agency interaction with the private sector and the subsequent level of and need for the regulations

and paperwork requirements imposed. Second is the standard of accountability to which agencies will be held.

The cost of complying with federal regulations and paperwork burdens is skyrocketing, not just in dollars, but in time spent simply figuring out how to comply. Conservative estimates place the cost of federal regulations on American taxpayers and businesses at close to \$600 billion annually, or just under ten percent of the GNP. Additionally, according to the federal government's own statistics, Americans now spend more than 6.8 billion hours filling out forms, answering survey questions, and compiling records that the federal government may or may not use. Moreover, the current federal regulatory model is adversarial, legalistic, prescriptive, and penalistic. It is a centralized, "command-and-control" system that imposes inflexible rules on an increasingly complex and diverse society, backed up by the threat of civil and criminal penalties. Indeed, the appearance, at least, is that federal regulators have unfettered and unchecked discretion when regulating, and that they are rewarded for the number of regulations they write and the number of enforcement actions they bring. The high costs and marginal accomplishments of this approach have been richly documented by a broad spectrum of policy analysts. In short, the cumulative effect of the paperwork and regulatory labyrinth has become so severe that small businesses cannot continue to incur these costs if they are to remain economically viable.

As you are well aware, there is a comprehensive effort underway in Congress to introduce much-needed common sense and practicality into the federal rulemaking process. The Chamber strongly supports this initiative and is devoting significant time and resources to ensuring its success.

#### **ARE REGULATORY BURDENS BEING REDUCED?**

The reason the Chamber so steadfastly supports the regulatory reform efforts in Congress is because not only are regulatory burdens not being reduced, they continue to grow.

In September of 1993, President Clinton issued Executive Order 12866 on Regulatory Planning and Review. This Executive Order was intended to ease the burdens of federal regulations on all regulated communities through directives to agencies to vigorously adhere to existing administrative laws and procedures such as the Paperwork Reduction Act of 1980 and the Regulatory Flexibility Act of 1980, to use cost-benefit analysis and risk assessment, and to practice goal-oriented regulating and use market-based incentives, among other things. Since then, the Clinton Administration has announced several other regulatory reform efforts including the March, 1995 directive on reinventing environmental regulations; another March, 1995 directive to agencies to cut obsolete regulations, reward results, create grassroots partnerships, and engage in negotiated rulemaking; the April, 1995 directive on the waiver of penalties and reduction of reports; and the May, 1995 initiative on reinventing

OSHA. In some instances, the 1995 programs may be too new to gauge. In others, agencies have missed deadlines altogether. For example, in President Clinton's March 4, 1995 memorandum to the heads of all agencies and departments, he directed that a list of regulations that could be eliminated or modified for each agency be forwarded to him for review by June 1, 1995. As of today, we can find no evidence that this requirement has been met. In any event, there is precious little evidence to suggest that federal agencies adhere to Executive Order 12866, nor is there evidence suggesting that regulatory burdens are being reduced. Given that the 1995 announcements are essentially a restatement of the 1993 Executive Order, we have little faith that the agencies will take these directives any more seriously than they did in 1993.

According to an April, 1995 study done by the Institute for Regulatory Policy, just the opposite is occurring. Specifically,

- \* Of 222 major environmental rulemakings issued from April through September of 1994 (the second six months after Executive Order 12866 took effect), only six stated that there was a "compelling public need" for the regulation, only six showed that the benefits outweighed the costs of the rulemaking, and of fourteen rulemakings that looked at alternatives, only eight provided that the most cost-effective approach for reaching the regulatory goal had been chosen.
- \* Despite the responsibilities of the Office of Information and Regulatory Affairs to review major rulemakings, of 510 regulations published during that same six-month period, 465 were not reviewed (or 90 percent) and of the 45 rules that were reviewed, none were rejected for failure to meet the cost/benefit requirement.

Moreover, according to the Washington University, President Clinton's 1996 budget calls for a 6.3 percent increase, or \$16.6 billion, in spending on regulatory programs. The



Washington University researchers also suggest that employment for federal regulators will hit an all-time high of 132,000 at a whopping 55 federal regulatory operations. That is a fifteen percent increase in just five years.

While these numbers provide compelling statistical evidence of a continuing problem, our members confirm these burdens in our surveys and in their individual stories to us. In preparation for the 104th Congress, the Chamber surveyed its membership to determine the issues of greatest concern to them. Out of more than 60 issues identified, unfunded mandates on state and local governments and the private sector ranked first, paperwork reduction ranked third, Occupational Safety and Health Act (OSHA) regulations ranked seventh, and regulatory flexibility for small businesses ranked ninth. It is interesting to note that all of the top ten issues dealt with getting the federal government off the backs of businesses. (Number two was welfare reform, number four was Social Security solvency, number five was balancing the budget, number six was reforming the budget process, number eight was civil justice reform, and number ten was opposition to mandated health benefits.) These results are a rather strong indicator that regulatory burdens continue to cripple businesses.

Also, earlier this year, we sent out a one-page survey to many of the participants in our Grassroots Action Information Network asking them to respond concerning regulatory burdens they face. Some of the findings were telling. Sixty-seven percent of the respondents said that federal regulations required them to purchase additional equipment.

Seventy percent had to modify their facilities. Seventy-two percent spend up to 25 hours each month filling out government-required forms and complying with other record-keeping and paperwork burdens. (Eleven percent spent from 26 to 50 hours and 14 percent spent more than 50 hours.) Seventy-four percent reported that the cost of lost time spent completing paperwork was medium to high, and 61 percent said the costs associated with the purchase of additional equipment was medium to high. These responses are especially enlightening given that 65 percent of the respondents had 50 or fewer employees.

The moral of the story is that executive orders and presidential directives are not always effective. They can only be as good as the leadership at any given time. There is no accountability, nor is there any method of enforcement. Moreover, we believe that this Administration's regulatory reform efforts do little more than tinker around the edges. They do not address the need for fundamental changes in the process by which federal regulations are created.

#### **INITIATIVES OF THE U.S. CHAMBER OF COMMERCE**

The results of the Chamber's 1995-1996 National Business Agenda survey clearly indicate that Chamber members are calling for federal laws and regulations that offer greater flexibility in complying with all manner of rules including health, safety, and environmental regulations, the use of sound science and risk assessment in setting standards, fewer paperwork requirements, and the safeguarding of property rights. Our members also are

demanding that the system be an accountable one where all parties are responsible for the consequences of their actions.

In response to our members' desires, the Chamber has launched a national grassroots effort, the Campaign for Regulatory Efficiency. The Campaign is unique in that it represents a broad-based approach to regulation, focusing on the cumulative impact of regulatory burdens, as well as on our traditional efforts regarding specific problems.

The Campaign organizes Chamber membership and resources under one banner and is guided by our new board-level Regulatory Affairs Committee. Through this joint effort, we hope to achieve the following outcomes:

- \* A strengthening of the federal regulatory process with strong accountability requirements, resulting in more effective rulemaking and greater, less expensive compliance by regulated entities;
- \* More reasonable regulations;
- \* An overall reduction in the number of regulations;
- \* Reduced paperwork burdens on businesses and the public; and
- \* More efficient and effective information and resource management.

I am pleased to say that we are off to a great start. Our number one and number three issues from the National Business Agenda -- relief from unfunded federal mandates and

greater control over the paperwork process -- have both been signed into law. We believe that this represents the beginning of a larger effort to achieve meaningful changes to the federal regulatory process.

In addition to our legislative focus, we are also in the beginning stages of putting together a comprehensive and statistically valid study to measure the effects of federal regulations on the business community, but particularly on small businesses. Not since 1979, when Arthur Anderson conducted a comprehensive survey on behalf of the Business Roundtable, has anyone looked at the micro-effects of regulations on businesses. Great overall macro-numbers exist from Thomas Hopkins and others chronicling the global economic impact from federal regulations. However, these numbers sometimes make it difficult to pinpoint the specific problem areas and, consequently, do not always provide clarity in terms of really understanding the problem.

We also are committed fully to working with this Committee and others in Congress to oversee federal agencies and their performance on complying with all manner of administrative laws governing the rulemaking process. We believe this to be an absolutely essential function. Meaningful change will not occur unless uncompromising accountability is part of the system.

**REGULATORY COMPLIANCE REPORT CARD**

One of the purposes of this hearing today is to look at how to grade agency performance on their rulemaking responsibilities -- developing a report card. This is another way of sounding the accountability theme. We believe there are several smart starting points to move toward achieving this objective.

First, the Office of Information and Regulatory Affairs within the Office of Management and Budget should be required to report annually to Congress on the success of the Administration's regulatory reduction initiatives. At a minimum, this report should contain milestones and target dates for completing these programs. When deadlines are not met, full and comprehensive explanations should be required.

Second, as with the current debate on OSHA reform where OSHA has been required to come before Congress to answer for the actions of the agency, Congress should vigorously continue to call other federal agencies to defend and justify their programs.

Third, this Committee, as well as other appropriate Committees of jurisdiction, should vigorously continue to conduct regular oversight hearings of agency programs.

Fourth, Congress should make full use of the Corrections Day calendar. At a minimum, Corrections Day can perform a positive service much as the famous Proxmire



Golden Fleece Awards of the 1970's, bringing publicity and public pressure onto those agencies that fail to eliminate or correct "dumb" rules.

Fifth, Congress should vigorously continue to use the General Accounting Office to study agency compliance with various administrative responsibilities.

Sixth, Congress should require that the Executive Branch report annually on its efforts to implement the National Performance Review (NPR) with a special emphasis on Chapter 3, titled "Empowering Employees To Get Results." One of the biggest challenges that small businesses face today -- indeed, all businesses -- is the cultural barrier that exists between the public and private sectors. The federal government has simply grown so big that it has forgotten how to act like a business with a fiduciary duty to American citizens and businesses. This segment of the NPR represents a positive step toward addressing this problem.

Seventh, Congress should devise a mechanism for requiring random audits of the adequacy of agency determinations of the economic impacts of regulations, and of the costs and benefits of regulations, to ensure that this function is being properly carried out and not simply having lip service paid to it.

Eighth, Congress should explore options for surveying targeted regulated communities to gauge the impact of regulatory efficiency initiatives, while at the same time assessing the

existence of continued problem areas of overly burdensome regulations. Perhaps the General Accounting Office or the Congressional Budget Office could assume this responsibility.

Finally, as we now exist in the information age, Congress should hold all segments of the Executive Branch accountable for making all necessary government information available -- including regulatory compliance information -- in an easily accessible format. Agencies need to refocus their efforts on technical assistance and compliance rather than enforcement efforts, and information technology is one of the fastest and most effective steps the government can take to realize this goal.

If a report card were to be issued today, we would gladly give Congress high marks. Certainly this Congress has done more to realize meaningful changes to the federal regulatory system than has ever been achieved before. The success of the regulatory plank of the Contract With America is unprecedented. This victory coupled with the efforts now underway in the Senate give us our best chance ever of bringing common sense and rationality to the fragmented and overly complex system with which we now must deal.

We would not be able to give the Administration the same high marks. Despite the great fanfare associated with the announcements of all the Administration's regulatory initiatives beginning back in 1993, and despite the promises of the NPR, the Administration, at best, would receive an incomplete, and at worst, failing grades.

## CONCLUSION

For far too long, federal agencies have enjoyed unbridled discretion to regulate freely, facing no consequences for their actions. With the burdens from federal actions reaching crisis proportions, it is time for agencies' feet to be held to the fire. Congress must also take responsibility for its part as well. Too often, laws are passed by Congress with many decisions about the laws' applications and intent left vague -- perhaps because the issues are difficult ones. However, this practice leaves agencies with the power to essentially legislate in those areas where Congress could not or would not.

Congress must begin to make tough decisions about public policy choices, giving better guidance to federal agencies on exactly what is expected and intended. Congress must also continue to exercise its oversight authority and begin to call federal agencies on their shortcomings. The regulated community also must begin to be a better participant in the process, voicing its views loud and clear, and taking part in helping Congress with its oversight function. Finally, federal agencies themselves must be prepared to answer for both the intended and unintended consequences of their actions and their failure to follow the rules. It should no longer be acceptable that boiler-plate language suffices for a regulatory flexibility analysis or that paperwork mandates are issued without a valid control number.

Chairman Meyers, again, we are pleased to have had this opportunity to testify before you today. We stand ready to assist you as you move forward on this critical endeavor. I would be happy to respond to any questions you may have.

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#### WHY THE U.S. CHAMBER MEMBERSHIP IS LEADING THE CAMPAIGN FOR REGULATORY EFFICIENCY

The House majority leadership of the new Congress was successful in shepherding through a sweeping regulatory reform initiative during the first one hundred days of the 104th Congress as part of the Contract With America. The Senate is now considering similar legislation in the "second hundred days." Also, the Clinton Administration is attempting to seize the high ground by advancing its own initiatives to streamline and simplify regulations.

#### BACKGROUND

The proliferation of regulatory relief bills and amendments during the 103rd Congress suggest that a bipartisan groundswell was already developing in the House and Senate even before the November 8 election. Few would quarrel with the need for effective federal rules to safeguard public health and the environment. The issue is the way in which federal regulatory agencies interact with the private sector and the states and localities. Many legislators have come to the conclusion that the entire regulatory apparatus needs to be redesigned because the costs and burdens are excessive in relation to the results. Simply stated, the system is inflexible, litigious, heavy-handed, overly-centralized and grossly inefficient.

Conservative estimates place the cost of federal regulations (government-wide) at more than \$500 billion annually, or 9.8% of GNP. Environmental regulations alone cost the economy nearly \$200 billion per year, according to the U.S. Environmental Protection Agency (EPA), and the figure is rising. Many of these resources are being squandered on legal and administrative costs, and not directed at areas of significant risk, where the greatest public benefits could be achieved.

The current federal regulatory model is adversarial, legalistic, prescriptive and penal. It is a centralized, "command and control" model that imposes inflexible rules on an increasingly complex and diverse economy, backed up by the threat of civil and criminal penalties. The high costs and marginal accomplishments of this approach have been richly documented by a broad spectrum of policy analysts at the Brookings Institution, the Center for the Study of American Business, and many other mainstream think-tanks and universities.

A variety of new regulatory models are being developed, and several of these alternative approaches (such as the environmental audit program and hazard analysis/critical control points methodologies) have been implemented at the state level with enormous success. What these new regulatory initiatives have in common is an emphasis on prevention (rather than detection), problem solving (rather than rule enforcement), and the use of analytical tools to identify significant risks to humans and the environment and focus resources where the greatest gains can be achieved.

## LEGISLATIVE OUTLOOK

The Chamber anticipates rigorous oversight by Congressional committees aimed at reining-in overzealous rulemaking by EPA, the Food and Drug Administration, the Occupational Health and Safety Administration, the Consumer Products Safety Commission, the National Labor Relations Board and other front line regulators. However, Congress itself is solely responsible for many abuses which usually derive from misguided efforts to pass costs onto the states and localities and to micro-manage the Executive Branch with overly prescriptive statutory directives. These errors can only be corrected by amending existing law.

Paperwork reduction and unfunded mandates legislation were signed into law earlier this year. The House has successfully passed all the remaining, major regulatory reform initiatives. Unfortunately, the Senate has yet to pass any corresponding legislation; however, it is now considering its own regulatory reform package in earnest. Differences between the two Houses may slow or jeopardize passage of crucial reforms.

## CHAMBER POSITION

Reinventing regulation is a top Chamber priority in the 104th Congress. Our action calls for the enactment into law of four broad principles that will govern all federal regulations. They are:

- Rules/standards must be based on the best available science. Risk assessment and characterization and cost/benefit analysis are indispensable tools to target regulatory resources at significant hazards where the greatest public benefit can be achieved at the least cost.
- All federal regulatory laws/programs/activities should be thoroughly reviewed to determine which of them can appropriately be returned to the states with adequate funding. Unfunded federal mandates on the states and their subdivisions should be eliminated. In areas affecting human health and safety and interstate commerce, state and federal regulators should be required by law to jointly establish science-based standards that are uniform throughout the nation.
- The orientation of federal regulation must shift dramatically from the current adversarial focus on the detection of violations and the punishment of non-compliance to a new focus on preventing violations and helping the regulated community solve problems. The regulatory police function must give way to a problem-solving function and there must be greater flexibility in meeting standards.
- Regulatory costs to taxpayers and the economy must be contained by a far more rigorous method of assessing impacts and by establishing a "regulatory budget" to audit progress by agencies in implementing more cost-effective ways to reach goals.

Through a broad-based grassroots campaign, the U.S. Chamber will activate its extensive membership represented by 215,000 businesses, 3,000 state and local chambers of commerce, and 1,200 trade and professional associations to generate strong support for these needed reforms.



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**THE U.S. CHAMBER HAS CREATED  
A NEW REGULATORY AFFAIRS COMMITTEE  
TO GUIDE THE CAMPAIGN FOR REGULATORY EFFICIENCY**

**MISSION:**

To ensure a sound federal regulatory infrastructure that is fair, conducive to business growth and job creation, and that does not subject industry or the public to unreasonable regulatory costs and burdens. To ensure that federal regulators comply with appropriate Executive Orders and administrative law governing regulatory review and information collection activities.

**PROBLEM STATEMENT:**

The cost of complying with federal regulations and paperwork burdens is skyrocketing, not just in dollars, but in the time spent figuring out how to comply. Indeed, some estimates place the total cost of federal regulations on American taxpayers and businesses in excess of \$500 billion annually. Additionally, according to the federal government's own statistics, in 1993, Americans spent more than 6.6 billion hours filling out forms, answering survey questions, and compiling records for the federal government. These burdens are particularly painful for the small business community. The U.S. Small Business Administration estimates that the proportionate cost of regulatory compliance for small businesses is almost three times that for large firms.

It is often the cumulative cost impact of paperwork and regulatory burdens -- as opposed to any one particular regulation or paperwork request -- that has the gravest consequences. This cumulative impact has become so severe, particularly for small businesses, that they can no longer continue to incur these burdens if they are to remain economically viable. Moreover, the ultimate societal goals, many of which are positive, are being undermined due to an inability of these entities to comply.

**ROLE OF THE REGULATORY AFFAIRS COMMITTEE:**

The role of the Regulatory Affairs Committee (RAC) is to have broad oversight responsibility for the federal government's regulatory and information collection processes.

Indeed, this role is what distinguishes the RAC from other Chamber policy committees. The RAC's primary focus will be on the process by which federal regulations are developed as opposed to the substance of regulations and information collection requests. In this manner, the RAC will compliment other Chamber policy committees, deferring to the substantive expertise of others, but providing yet another avenue for ensuring that federal regulatory activities are necessary and the least burdensome alternatives.

#### OBJECTIVES:

The RAC will address the range of regulatory and paperwork tools available to curb unnecessary and excessive burdens on the business community. It will be flexible to recognize new objectives and goals over time. Moreover, the members of the Committee will engage in periodic priority setting to determine new objectives and goals. Following are suggestions of what the Committee may choose as objectives:

- \* Achieve increased public recognition and support for a sound regulatory infrastructure by using our vast grassroots and media capabilities, and create a grassroots database of Chamber members nationwide interested in influencing, reforming, and participating in the regulatory process.
- \* Alert Chamber members to major regulatory initiatives and on some regular basis, identify top two or three federal regulatory initiatives and follow them through the review process to ensure compliance with all administrative rules and laws.
- \* Annually (or on some other regular basis) identify existing regulations that should be reviewed for their continued vitality and need, and ensure that such a review be undertaken.
- \* Identify alternatives to the problem of unfunded federal mandates on businesses and work towards those solutions.
- \* Develop and promote information resources that assist Chamber members, particularly small businesses, in understanding the regulatory process and complying with identified regulations.
- \* Work with the Office of Information and Regulatory Affairs to develop a federal information management system that meets the needs of the business community, including easier access to forms and regulations via electronic means.
- \* Maintain strong communications with the Office of Information and Regulatory Affairs and key oversight Committees in Congress.
- \* Develop and recommend sound regulatory policies to the Chamber's Board of Directors and then implement such policies.

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**U.S. CHAMBER CONTACTS  
ON REGULATORY ISSUES**

**Regulatory Issues in General**

**Contact: Jeff Joseph, Vice President, Domestic Policy**  
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<b><u>Selected Topics</u></b>	<b><u>Chamber Contact</u></b>	<b><u>Phone</u></b>	<b><u>Fax</u></b>
Davis Bacon Act	Peter Eide	(202) 463-5500	(202) 887-3445
Environment, Health and Safety Compliance	Harvey Alter	(202) 463-5500	(202) 887-3445
Export Control	Myron Brilliant	(202) 463-5460	(202) 463-3114
Health Care	Neil Trautwein	(202) 463-5500	(202) 887-3445
National Chamber Litigation Center	Cam Esser	(202) 463-5337	(202) 463-5346
National Labor Relations Board	Peter Eide	(202) 463-5500	(202) 887-3445
OSHA Regulations	Peter Eide	(202) 463-5500	(202) 887-3445
Paperwork Reduction	Nancy Fulco	(202) 463-5500	(202) 887-3445
Pay Docking and the Fair Labor Standards Act	Peter Eide	(202) 463-5500	(202) 887-3445
Pensions	David Kempis	(202) 463-5500	(202) 887-3445
Private Property Rights	Stu Hardy	(202) 463-5500	(202) 887-3445
Regulatory Flexibility	David Voight	(202) 463-5500	(202) 887-3445
Risk Assessment	Mary Bernhard	(202) 463-5500	(202) 887-3445
Unfunded Mandates	Nancy Fulco	(202) 463-5500	(202) 887-3445

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## RISK ASSESSMENT

### What's At Issue

Should the Federal government use risk assessment and cost/benefit analyses to direct limited resources toward problems that represent the most serious risks to human health and the environment?

### Why Important

Everybody wants to make the federal government work better and cost less. One way this can happen is to choose to regulate only the most serious environmental (and other) risks. This type of regulatory reform, or regulatory improvement, helps everybody.

The United States spends more than \$150 billion per year on compliance with environmental regulations. The Environmental Protection Agency estimates this will rise to 2.3 percent of the GNP by the turn of the century. This enormous amount of money can be directed to the most important projects by understanding and evaluating risks.

Everybody agrees we need to clean and protect the environment and that a clean, healthy environment is important to everyone. But, are we spending our national resources wisely? Are we getting our money's worth?

These questions will become increasingly important in the years to come. Because we have already spent massive amounts of money on pollution controls and cleaned up the "big emissions," additional cleanups will be very expensive with proportionately little environmental improvement. Thus, there is a central need for procedures, such as risk assessment/cost benefit analysis, to assure wise choices are made and that our money is well spent.

### Chamber Position

The Chamber advocates regulating public health and environmental quality based on the scientific assessment of relative risks. We believe the assessment must be based on the best information available, use the best methods known and the results must be clearly communicated to the public. The results must be used to set priorities for action and spending.

### Chamber Contact

Mary Bernhard, (202) 463-5500.

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## REGULATORY FLEXIBILITY ACT AMENDMENTS

### What's at Issue

Whether federal agencies should adhere to their responsibility to consider specifically the impact on small businesses of proposed rules and regulations and subsequently choose the least burdensome method by allowing judicial review of an agency's actions.

### Why Important

The original Regulatory Flexibility Act (RFA) was passed in 1980. It requires federal agencies to analyze the impact of their proposed regulations on small entities, to consider alternative ways of achieving their regulatory objective, and then to choose that which is the least burdensome method. Unfortunately, the RFA has a major flaw. Taking an agency to court over the adequacy of its compliance with the RFA specifically is prohibited. This means that agencies can, and frequently do, simply ignore the RFA requirements or give them minimal lip service. During the 103rd Congress, Senator Wallop, with Chamber support, successfully passed an amendment in the Senate that would have corrected this problem by allowing judicial review of agency actions. The House of Representatives also had a lopsided advisory vote supporting the Senate position. Regrettably, the Congress adjourned before the matter could be resolved completely and the issue will have to be considered again in the new Congress.

### Chamber Position

The Chamber supports amending the RFA so that agencies which fail to meet the requirements of the law can be brought into court and have the regulations set aside. The Chamber believes that regulations ought to be based on good sense, sound science, and applied in ways that are least burdensome.

### Chamber Contact

David Voight, (202) 463-5500.



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## PRIVATE PROPERTY RIGHTS

### What's at Issue

The Chamber anticipates major battles in 1995 over property rights/land use issues as Congress debates reauthorization of the Endangered Species Act and grapples with comprehensive wetlands protection legislation. Strong bipartisan support for several property rights amendments to the National Biological Survey bill, the California Desert Protection Act and the Safe Drinking Water Act this year suggests growing Congressional sensitivity to landowner rights.

### Why Important

Private property rights, guaranteed to all citizens by the Constitution, are being progressively eroded by laws intended to protect the environment. These statutes are curbing use and impairing the value of private land for real or perceived benefits, without compensating landowners. At the same time, the federal government - which already owns one third of the United States - continues to purchase more real estate to add to the federal land inventory, in some cases by condemnation proceedings.

The most notable examples of the "taking" of landowner's property values are in the area of endangered species and wetlands regulations. For example, if an endangered plant, bird, fish, insect, or other species is found to inhabit all or part of an owner's property, any activity that may disrupt the species' habitat must cease, under the threat of civil and criminal penalties. Similarly, when owners find themselves in possession of wetlands - perhaps because the definition of "wetlands" has been arbitrarily expanded - farming, logging, homebuilding and other activities may be jeopardized.

In these instances, farmers, developers, and other owners and businesses are forced to bear the full burden of the law, while the public receives the "benefits" and pays none of the costs. As long as preservation is perceived to be "free," the demand for additional land set-asides will be unlimited.

Landowners are fighting back in the courts. The U.S. Government currently faces more than \$1 billion in outstanding takings claims. Recently, the Supreme Court decided two such cases (Lucas v. South Carolina Coastal Commission and Dolan v. City of Tigard, Oregon) in favor of the landowners.

### Chamber Position

The U.S. Chamber of Commerce supports all of the above legislative initiatives, and will work for strong bipartisan cosponsorship, early hearings and timely passage. Additionally, the Chamber's National Litigation Center will seek out opportunities to intervene in lawsuits testing the limits of regulatory "takings" of private property values. At a time when most nations of the world are privatizing government holdings, the U.S. government continues to add to the federal land inventory and expand its already intrusive regulatory powers over private lands. This trend must be reversed.

### Chamber Contact

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## DAVIS - BACON ACT

### What's The Issue

Whether Congress should repeal the Davis-Bacon Act.

### Why Important

The 1931 Davis-Bacon Act requires construction companies to pay their employees "prevailing wages" on all government-paid construction jobs they perform. Over the years the term "prevailing wages" has come to mean the wages paid under a local union contract. Periodically, legislation to repeal Davis-Bacon is introduced in Congress but has never been passed. Repeal proponents argue that because Davis-Bacon requires the government to pay artificially high "union scale" wage rates, the government pays billions more than it needs to for buildings, roads, bridges and other public works such as dams, airports, and water purification facilities. Organized labor, on the other hand, supports legislation to broaden and strengthen Davis-Bacon.

### Chamber Position

The Chamber has long maintained that the Davis-Bacon Act should be repealed. It stifles competition and has an inflationary impact by unnecessarily increasing government spending. A contractor whose wage and benefit scale is lower than the local union scale ought to be able to bid on government-funded projects. Davis-Bacon forces taxpayers to pay considerably more than necessary for government projects. Without Davis-Bacon, taxpayers would receive the same services for far less money, or far more services for the same money. Without question, the Davis-Bacon Act is merely a generous and unnecessary welfare program for construction unions.

### Chamber Contact

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#### THE NEED FOR A NEW EXPORT CONTROL REGIME WHICH REFLECTS POST-COLD WAR COMMERCIAL REALITIES

##### **What's At Issue**

Should the United States pass legislation which imposes strict disciplines on the use of unilateral export controls?

##### **Why Important**

By their nature, multilateral and unilateral export controls place restrictions on the ability of U.S. companies to ship certain goods and technologies abroad. Under the legislative authority of the Export Administration Act of 1979, unilateral export controls are maintained on certain technologies and goods for reasons of national security, foreign policy and short supply. While there are legitimate reasons for export controls, there is some awareness in the public sector and business community that the current U.S. unilateral export system does not reflect post-cold war realities, and is unwieldy and bureaucratic so as to be a major impediment to business. Unilateral export controls prevent U.S. companies from being able to take full advantage of new and emerging markets (e.g., China). Part of the problem lies in the fact that other countries that are major competitors for markets like China do not impose the same restrictions. While it is difficult to estimate precisely, it is widely believed that U.S. export controls cost U.S. companies millions of dollars annually in sales.

##### **Chamber Position**

The Chamber strongly supports the establishment of a strengthened international export control regime. In the absence of such a regime, export controls are ineffective and serve only to impede U.S. companies. The Chamber further supports the passage of legislation reforming the Export Administration Act. The legislation should, in part, liberalize controls on goods widely available; streamline the administrative processing of licenses to be more timely, transparent, and consistent; and establish clearer lines of responsibility and accountability for export control decisions.

##### **Chamber Contact**

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## PAY DOCKING AND THE FAIR LABOR STANDARDS ACT

### What's At Issue

Whether Congress should enact legislation amending the Fair Labor Standards Act (FLSA) so the Department of Labor (DOL) no longer can interpret that law to require payment of overtime for salaried employees. Further amendments could include a small business exemption from the FLSA, including its minimum wage requirement.

### Why Important

Under existing DOL regulations interpreting the FLSA, if an employer reduces a salaried employee's pay for work hours missed (if less than a full day), the employee (and all other salaried employees subject to the same "pay docking" policy) must be considered an hourly employee under the FLSA and is due time-and-a-half for all hours worked excess of forty in one week during the preceding two years (three years in certain circumstances). Backpay for all salaried employees could be a huge sum. In the past, the FLSA with its minimum wage requirements and complex overtime rules, included an exemption for small employers. That exemption was removed in recent amendments to the FLSA.

### Chamber Position

The FLSA must be amended to clarify the distinctions between the requirements for compensating employees paid on an hourly basis and those paid a salary. Employers must have the ability to pay some employees on a salary basis because of the nature of the work they perform. Employers must be able to reduce a salaried employee's pay in less than full day increments to allow reasonable flexibility for both the employee and employer. The DOL should not have the discretion to interpret its own regulations so that they are contrary to the purposes and policies of the FLSA.

Very small businesses often cannot afford to employ anyone if they must be paid the federal minimum wage. These employers should be exempt from the minimum wage and other requirements of the FLSA so they can hire a few (usually part-time) essential employees.

### Chamber Contact

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## OSHA REGULATIONS

### What's At Issue

Whether Congress, exercising its budget and oversight authority, should control the regulatory excesses of the Occupational Safety and Health Administration (OSHA). When the business community successfully stopped the Comprehensive Occupations Safety and Health Reform Act (COSHRA) in the 103rd Congress, OSHA, at the behest of organized labor, embarked on a campaign to reform the law through agency regulations instead of through Congress.

### Why Important

If unchallenged, OSHA will issue a number of proposed regulations regarding ergonomic (human movement and postures) safety and health as well as indoor air quality. In addition, a number of complex and far-reaching regulations are on the agency's regulatory agenda for 1995 and 1996. These mandates, especially those regarding ergonomics and indoor air quality, will cost employers billions, if not hundreds of billions, of dollars per year. That does not include the cost of OSHA's penalties and fines levied for noncompliance.

### Chamber Position

All federal regulatory agencies, especially OSHA, must be controlled and not allowed to rewrite existing laws through the issuance of new regulations. Congress must energetically maintain a watchful eye on OSHA and, when necessary, encourage the agency to issue only absolutely necessary regulations based on both sound cost/benefit analyses and adequate scientific evidence. The ergonomics and indoor air regulations must be reconsidered in light of their reasonableness, their feasibility, and the huge financial impact the rules, as proposed, will have on every employer. OSHA's regulatory and punitive zeal must be controlled. The choice need not be between safe jobs and no jobs. Rather, the challenge is how can OSHA help employers and employees achieve workplaces reasonably free of injuries and illnesses.

### Chamber Contact

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## NATIONAL LABOR RELATIONS BOARD

### What's At Issue

Whether the National Labor Relations Board (NLRB) should, through its regulations and decisions interpreting and applying the National Labor Relations Act (NLRA), effectively rewrite or amend that law to assist union organizing or give unions more power and leverage when negotiating with employers.

### Why Important

The NLRB can issue regulations (although it has rarely done so in the past) and issue decisions interpreting the NLRA. In this manner the NLRB can effectively amend the federal labor law and organized labor can achieve through this agency what it may not be able to achieve in Congress. The result will be far more powerful unions and a nationwide drive by the AFL-CIO to organize employees in every company in every industry.

### Chamber Position

The Chairman of the NLRB, a Clinton appointee, is committed to changing the agency's regulations and decisions to achieve many of the labor law reforms Congress has consistently rejected. Serving with him as a member of the Board is a former union attorney and another pro-union lawyer is likely to be nominated soon. That will give the Chairman and organized labor a majority on the 5-member NLRB. The Chamber must fill its historic role of leading the business community opposition to the excesses of the NLRB, whether they are regulatory or based on the Board's decisions.

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**THE NATIONAL CHAMBER LITIGATION CENTER**  
*Challenging Onerous Regulations in the Courts*

The Chamber's legal affiliate, the National Chamber Litigation Center, or NCLC, represents the business community in court on a wide range of regulatory issues. Whether suing the federal government on behalf of the Chamber or supporting companies with friend-of-the-court briefs, NCLC aggressively pursues regulatory relief for businesses from the third branch of government, the judiciary.

NCLC litigates business issues at every level of the judicial system, from state administrative agencies to the U.S. Supreme Court. Since its founding in 1977, NCLC has taken nearly every federal regulatory agency to court. Our particular "favorites" include the Department of Interior, the Department of Labor, the Environmental Protection Agency, the National Labor Relations Board, and the Occupational Safety & Health Review Commission.

NCLC's current litigation docket includes the following regulatory challenges:

- **OSHA PENALTIES** - NCLC objects to efforts by the Secretary of Labor to increase OSHA penalties by multiplying one violation by the number of people exposed to a hazard. (*Secretary of Labor v. Arcadian Corporation and Secretary of Labor v. Hartford Roofing Company*)
- **EPA PENALTIES** - NCLC urges EPA to shed some light on its penalty policy by subjecting to public notice and comment the computer model it uses to calculate the economic benefits of failing to comply with environmental laws. (*Petition for Rulemaking Concerning Recovery of Economic Benefit in EPA Enforcement Proceedings*).
- **ENVIRONMENTAL CRIMES** - NCLC argues against sending innocent people to prison for knowingly engaging in conduct that results in a violation of a Clean Water Act permit, regardless of whether they knew of the requirements, or even the existence of the permit. (*Weitzenhoff v. United States*)
- **NATURAL RESOURCE DAMAGES** - NCLC and others sue the Interior Department for issuing arbitrary regulations that are not cost-effective. (*Chamber of Commerce v. Department of Interior*)

- **EPA REGULATIONS** - NCLC and others sue EPA for violating a congressional deadline for revising two burdensome and expensive hazardous waste regulations, commonly known as the "mixture" and "derived-from" rules. (*Chemical Manufacturers Association, et al. v. Browner*)

- **"GREEN" LABELING** - NCLC and others challenge California's environmental labeling rules which dictate how companies may use words like "recycled" and "biodegradable" on their products. (*American Advertisers Association, et al. v. Lungren*)

- **PREVAILING WAGES** - NCLC challenges a California county ordinance that imposes prevailing wages and benefits on certain construction projects. (*Chamber of Commerce v. Bragdon*)

- **NLRB PROCEDURES** - NCLC argues against NLRB proposals to speed up the union election process by eliminating pre-election hearings, which employers have traditionally used to campaign against union representation. (*Angelica Healthcare Services and Barre National, Inc.*)

- **NLRB DEFINITIONS** - NCLC argues that the NLRB should not narrow the definition of "supervisor" under the National Labor Relations Act to include them as employees purposes of union organizing. (*Providence Hospital and Alaska Nurses' Assn; Ten Broeck Commons Nursing Home and United Industry Workers Local 424*)

NCLC's litigation activities extend beyond the regulatory arena. As the nation's only public policy law firm to solely represent business interests, NCLC has advanced its pro-business agenda by participating in over 300 cases.

For further information about the National Chamber Litigation Center and its cases, please call Cam Esser at 202/463-5337.

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United States General Accounting Office

GAO

Testimony

Committee on Small Business  
House of Representatives

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# REGULATORY REFORM

## How Can Congress Assess the Administration's Initiatives?

Statement of L. Nye Stevens  
Director  
Federal Management and Workforce Issues



Regulatory Reform:How Can Congress Assess the Administration's Initiatives?

Summary of Statement by L. Nye Stevens  
 Director  
 Federal Management and Workforce Issues

The administration has announced a number of initiatives designed to address problems in federal regulations and the federal regulatory process. Some of these initiatives have been governmentwide in scope, while others have focused on particular agencies.

Different approaches could be used to assess these regulatory reform initiatives. One approach would be to take each initiative, break it down into its constituent parts, and determine whether each part has or has not been implemented. That approach would reveal little about the administration's overall reform effort and would focus primarily on whether actions have been taken, not whether the administration has achieved its underlying goals. A more comprehensive and valid approach would be to gain an understanding of what goals the administration's regulatory reform initiatives are generally attempting to accomplish and then develop accurate measures for gauging the extent to which those overall goals are being met.

At least two central themes run through many of the regulatory reform proposals: (1) an attempt to reduce the burden federal regulations and regulatory agencies impose on the regulated public and (2) an attempt to change federal agencies' regulatory approach from a focus on compliance with detailed procedures to a focus on achieving desired outcomes. However, regulatory burden and agencies' outcomes are each very difficult to measure. Various measures of regulatory burden have been used in the past. GAO's previous work indicates that these measures, such as the time required to complete federal paperwork and the overall cost of complying with regulations, must be interpreted very carefully. The Government Performance and Results Act of 1993 requires agencies to develop clear statements of what their regulations are intended to accomplish. Some agencies are beginning to do so, but many still focus on outputs (e.g., the number of safety inspections completed), not outcomes (e.g., whether fatality rates are declining). The act recognized that several years would be required to change agencies' emphasis from process to results.



Madam Chair and Members of the Committee:

I am pleased to be here today to discuss the administration's regulatory reform initiatives and how they might be assessed. I would first like to describe those initiatives, then discuss what we know about their implementation, and finally present some thoughts regarding how the success of those proposals could be measured. My comments are based on our ongoing monitoring of the administration's "reinventing government" program and prior work we have done on regulatory and management issues. (See attachment I for a list of selected GAO products on regulatory issues.)

In essence, we believe that the best way to assess the administration's regulatory reform proposals would be to first identify what goals those proposals are generally trying to accomplish and then develop valid measures of how well those goals are being achieved. We believe that at least two central themes run through many of the administration's proposals: (1) an attempt to reduce the burden federal regulations and regulatory agencies impose on the regulated public and (2) an attempt to change federal agencies' regulatory approach from a focus on compliance with detailed procedures to a focus on achieving desired outcomes. However, regulatory burden and agencies' outcomes are each very difficult to measure.

We are encouraged by this Committee's intention to monitor the administration's progress in this area. Congressional oversight is essential to encouraging sustained attention to and attaining agreement on how to enhance and assess the ongoing regulatory reform efforts. By focusing its oversight activities on whether agencies are achieving the administration's overall goals, this Committee can play an important role in improving the government's regulatory performance.

Regulatory reform is believed needed because many of the previous reforms have not worked as well as expected. For example, we reported last year that some agencies were consistently viewed by the Small Business Administration as not complying with the Regulatory Flexibility Act of 1980, which was intended to ensure that the interests of small entities are protected in the rulemaking process.<sup>1</sup> We recommended several changes in the administration of the act to improve agencies' compliance, some of which have already taken place. Nevertheless, calls for reform continue.

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<sup>1</sup>Regulatory Flexibility Act: Status of Agencies' Compliance  
(GAO/GGD-94-105, Apr. 27, 1994).

THE ADMINISTRATION'S REGULATORY REFORM INITIATIVES

During the past 2 years, the administration has announced a series of initiatives designed to address problems in the federal regulatory process and in the regulations themselves.

- o The September 7, 1993, National Performance Review (NPR) report contained 10 recommendations to improve regulatory systems, including (1) the creation of an interagency regulatory coordinating group to share information and coordinate approaches; (2) encouragement of the use of innovative regulatory approaches and negotiated rulemaking; (3) increased use of alternative means of dispute resolution; and (4) a ranking of the seriousness of environmental, health, or safety risks.<sup>2</sup> The NPR report also contained a number of agency-specific recommendations that involved regulatory issues. For example, NPR recommended that the Environmental Protection Agency (EPA) amend the regulations it determines are most troublesome for local governments to allow alternative, flexible approaches to meeting environmental mandates. NPR also recommended that the Department of Labor shift responsibility for workplace safety and health to employers by issuing regulations requiring self-inspections and implementing a

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<sup>2</sup>From Red Tape to Results: Creating a Government That Works Better and Costs Less, report of the National Performance Review, Vice President Al Gore, September 7, 1993.

sliding scale of incentives and penalties to ensure safety standards are met.

- o On September 30, 1993, the President issued Executive Order 12866, "Regulatory Planning and Review," which began the administration's program to reform the regulatory process and make it more efficient.<sup>3</sup> Among other things, the order (1) established the administration's overall regulatory philosophy and principles, (2) instituted a set of procedures to allow the administration to plan its regulatory program, (3) required each agency to submit a program for periodic review and possible elimination or modification of its existing significant regulations, and (4) delineated the responsibilities of agencies and the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) for the centralized review of regulations.
- o In early 1995, the administration announced a regulatory reinvention initiative as part of "Phase I" of NPR. On March 4, 1995, the President sent a memorandum to the heads of departments and agencies describing plans for changing the federal regulatory system because "not all agencies have

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<sup>3</sup>The order revoked Executive Orders 12291 and 12498, which established regulatory principles and the review process during the Reagan and Bush administrations.

taken the steps necessary to implement regulatory reform."<sup>4</sup>  
 The President directed each agency to do the following:

- (1) Conduct a page-by-page review of all its regulations in force and eliminate or revise those that were outdated or in need of reform.
- (2) Change the way the performance of both the agency and frontline regulators are measured so as to focus on results, not process and punishment.
- (3) Convene groups of frontline regulators and the people affected by their regulations around the country and create "grassroots partnerships."
- (4) Expand their efforts to promote consensual rulemaking.

o On March 16, 1995, the President announced a number of regulatory reform initiatives at EPA and the Food and Drug Administration (FDA) as well as some reforms all federal agencies were to initiate. They were as follows:

- o EPA was directed to undertake 25 reforms to improve its regulatory program, including (1) reducing existing

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<sup>4</sup>The March 4, 1995, memo represented the written instructions that followed a February 21, 1995, White House event on these issues.



paperwork burdens by 25 percent, with the reductions focusing on with local governments and small businesses; (2) providing incentives through reduced penalties for self-disclosure and correction of certain violations; (3) making greater use of market-based regulations;<sup>5</sup> and (4) focusing hazardous waste and drinking water treatment requirements on areas with the greatest risk.

- o FDA was directed to make a number of changes to its regulatory program, including (1) allowing manufacturing changes without FDA preapproval if the risk is negligible; (2) exemption of up to 138 additional categories of low-risk medical devices (e.g., oxygen masks and syringes) from premarket review; and (3) elimination of virtually all environmental assessments for human drugs and biologics and animal drugs.
- o All federal agencies were directed to adopt policies that would allow small businesses that had acted in

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<sup>5</sup>Examples of market-based regulations include open-market air emissions trading and effluent trading in watersheds. Emissions trading is a way of reducing pollutant emissions to the environment by applying pollution-reduction measures at the places where reductions are most cost-effective. Under an effluent trading program, a discharger that can reduce pollution below the minimum level required to meet water quality standards can sell its excess pollution reductions to other dischargers within the same watershed.

good faith but were first-time violators of a regulation (1) an opportunity to avoid punitive actions by correcting the violations within an appropriate period, and (2) a waiver of up to 100 percent of agency fines when a violation did not involve significant health or safety threats or criminal wrongdoing and the fine will be used to correct the underlying problem. Also, agencies were directed to require regularly scheduled reports to the federal government only half as often unless the agency head determines that the change is not legally possible, would not properly protect public health or the environment, or would otherwise not be in the best interests of the nation.

- o On May 16, 1995, the President and the Vice President announced three sets of initiatives intended to reform regulatory procedures at the Occupational Safety and Health Administration (OSHA): (1) increasing assistance to and lessening inspections and penalties for employers with aggressive health and safety programs; (2) streamlining and rationalizing OSHA's regulations by identifying priorities, eliminating or fixing outdated or confusing standards, and working with business and labor groups; and (3) changing the way OSHA enforces rules, including the redesign of field office operations and the use of information technology to inform employers and others about OSHA rules.

- o On June 12, 1995, the President proposed 28 changes in federal pension rules that affect small businesses, including (1) allowing employers with 100 or fewer employees to have a simplified pension plan that eliminates certain requirements and eases other rules, (2) improving and expanding 401(k) plans, (3) eliminating excessive testing and simplifying certain definitions in pension rules.
  
- o On July 11, 1995, the Vice President and the First Lady announced changes to the Medicare and Medicaid programs run by the Health Care Financing Administration (HCFA). Among these changes were (1) eliminating "physician attestation" forms for Medicare patients, (2) giving states more power to approve training programs offered in nursing homes for nurse aides, (3) reducing paperwork and costs for laboratories in doctors' offices, and (4) eliminating unnecessary process requirements and developing outcome-based performance standards.

#### Pending Announcements

In addition to the regulatory reinvention initiatives that have been announced to date, NPR has said that announcements are pending in several areas: banking, education, food, natural resources, science and technology, and transportation.

IMPLEMENTATION OF REGULATORY REFORM INITIATIVES

Some of the regulatory reform initiatives the administration has announced have already begun to be implemented. In December 1994, we reported that 6 of the 10 NPR recommendations on improving regulatory systems had been partially implemented and that 1 had been fully implemented.<sup>6</sup> For example, Executive Order 12866 created the recommended regulatory working group and established the use of innovative regulatory approaches as administration policy. A September 30, 1993, presidential memorandum directed each federal regulatory agency to identify at least one rulemaking in which it would use negotiated rulemaking within the next year; by late 1994, 16 agencies had done so. However, we also reported that most of the agency-specific NPR regulatory proposals had not been even partially implemented. (See attachment II for a listing of the NPR regulatory recommendations and a summary of each recommendation's implementation status as of late 1994.)

We have not assessed the administration's other regulatory reform initiatives. However, the administration has released information about the implementation of some of these efforts. For example, OIRA issued a report in 1994 describing the progress that had been made during the first year of Executive Order

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<sup>6</sup>Management Reform: Implementation of the National Performance Review's Recommendations (GAO/OCG-95-1, Dec. 5, 1994).

12866. The OIRA report noted numerous difficulties associated with measuring the success of the order (e.g., judging whether agencies are producing "smarter" regulations) but stated

"we are . . . confident that the Executive Order is making a difference, that the Administration is moving in the right direction, and that there is much to be proud of . . . . [H]owever, our optimism is guarded; we know full well that there is much to be done to obtain the benefits we are seeking to realize."<sup>7</sup>

Although agencies were supposed to prepare a report for release on June 15, 1995, summarizing agency actions on all four of the tasks in the President's March 4, 1995, memorandum, OMB has not released those reports. However, on June 12, 1995, the President told the White House Conference on Small Business that the page-by-page review of existing federal regulations had resulted in proposals to eliminate 20 percent and modify another 35 percent of the 140,000 page Code of Federal Regulations. He said the 16,000 pages of regulations eliminated weighed 39 pounds and would stretch 5 miles if put end-to-end. He also said that

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<sup>7</sup>Another group examined the implementation of the executive order and reached a negative appraisal. An April 1995 study by the Institute for Regulatory Policy concluded that only a limited number of EPA rulemaking notices published in the Federal Register demonstrated compliance with key directives in the executive order.



another 31,000 pages of rules would be modified either through administrative or legislative means.

#### ASSESSING THE ADMINISTRATION'S REGULATORY INITIATIVES

The Committee has asked how Congress might go about assessing the administration's regulatory proposals. One way to do so would be to take each initiative, break it down into its constituent parts, and determine whether each part has or has not been implemented. Using the President's March 4, 1995, memo as an example, one could ask whether all departments and agencies had

- o conducted a page-by-page review of their regulations and eliminated or revised those that are in need of reform;
- o changed the way they measure their performance and the performance of their frontline regulators;
- o created "grassroots partnerships" between frontline regulators and those affected by the regulations; and
- o expanded their efforts to promote consensual rulemaking.

Each of the agency- or issue-specific announcements made since March of this year could be reviewed in the same manner. For example, what progress has EPA made concerning each of the 25

actions delineated in the March 16, 1995, announcement? Which of the 28 changes in federal pension rules announced on June 12, 1995, have been implemented?

Although this approach may be instructive in some respects, the end result may ultimately be somewhat unsatisfying for at least two reasons. First, a proposal-by-proposal assessment would lack the overall focus needed to reach conclusions about the administration's effort as a whole. Congress would learn a great deal about individual "trees" in the regulatory "forest," but not much about the forest itself. Second, focusing on the implementation of each initiative would indicate whether the recommended changes have been adopted, but may not reveal whether the administration has achieved its underlying goals.

If Congress is interested in developing a "report card" that substantively assesses all of the administration's regulatory reform proposals, it should review those efforts in a crosscutting manner that goes beyond surface-level descriptions. Congress should focus on the goals the regulatory reform initiatives are generally attempting to accomplish and then use valid measures of how well those goals are being accomplished to assess the administration's progress.

Although the administration's regulatory reform initiatives address a wide variety of issues and involve a number of

different actions, at least two central themes run through many of the proposals: (1) an attempt to reduce the regulatory burden agencies impose on businesses and the public and (2) an attempt to change agencies' regulatory approach from a focus on compliance with detailed procedures to a focus on achieving outcomes.

### Regulatory Burden

Perhaps the most obvious example of the administration's attempt to reduce regulatory burden is its effort to eliminate obsolete regulations. Even before the March 4, 1995, memo's call for such cuts, section 5 of Executive Order 12866 required each agency to submit to OIRA a program under which the agency would periodically review its existing significant regulations to determine whether they should be eliminated or modified. The first listed reason for this review is "to reduce the regulatory burden on the American people."

To determine the effect of the administration's initiatives on regulatory burden, the amount of burden before and after the implementation of those initiatives must be accurately measured. A variety of measures of regulatory burden have been used in the past, some of which are more valid than others. Each of these measures of burden should be carefully examined to ensure that it

accurately reflects the impact of regulatory action on businesses and the public.

For example, representatives of both government and industry have sometimes described regulatory burden in terms of the absolute number of rules, the number of pages in the Code of Federal Regulations, the length of the Code on a bookshelf, the weight of the rules, or the length of all of the rules if each sheet of paper were placed end to end. Other observers have used the number of federal employees involved in regulatory activities or the size of federal regulatory agencies' budgets as a measure of regulatory burden.<sup>8</sup> Although these measures are relatively easy to develop and are appealing in some respects, they may not accurately reflect the regulatory burden imposed on the public or a small business. For example, if an agency eliminates 1,000 pages of regulations that rarely if ever affect small businesses, the regulatory burden those businesses feel will be relatively unchanged. A regulatory agency that has less than 1,000 employees may impose a greater regulatory burden on small businesses than another agency that has 10 times as many employees simply by virtue of the regulatory issues involved and the way those regulations are enforced. Therefore, the number or length of regulations, the number of regulatory employees, and

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<sup>8</sup>See, for example, Melinda Warren, Reforming the Federal Regulatory Process: Rhetoric or Reality?, Occasional Paper No. 138. St. Louis: Center for Study of American Business, Washington University, June 1994.

similar types of measures may be poor proxies for regulatory burden.

Another way that regulatory burden has been measured is the total number of hours needed to fill out federal paperwork. The Paperwork Reduction Act requires OMB to prepare an information collection budget that measures paperwork requirements imposed on everyone outside the federal government.<sup>9</sup> However, care must also be taken to properly interpret these statistics as well. In December 1993, we reported that the burden hour estimate increased by 261 percent between 1987 and 1992--from more than 1.8 billion hours to nearly 6.6 billion hours.<sup>10</sup> However, most of this change was due to a Department of the Treasury reestimate of the time spent in dealing with burdens, not the imposition of new burdens. OMB's burden hour estimate can also be affected by changes in respondent population size, revisions to data collection instruments, and other factors. Therefore, even though the burden hour estimate declined 6 percent between 1992 and fiscal year 1993, all of these factors must be examined to determine whether the actual burden declined.

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<sup>9</sup>Agencies usually develop an estimate of the average time each respondent requires to comply with a particular collection of information and of the total number of respondents who must comply with the collection requirement. The total burden is calculated by multiplying the average response time per respondent by the expected number of respondents.

<sup>10</sup>Paperwork Burden: Reported Burden Hour Increases Reflect New Estimates, Not Actual Changes (GAO/PEMD-94-3, Dec. 6, 1993).



Another commonly used index of regulatory burden is the cumulative cost of complying with regulations--either on individual businesses or the economy as a whole.<sup>11</sup> Again, however, these cost measures must be carefully examined. We pointed out in a March 1995 report that estimates of total regulatory costs imposed on the economy can vary substantially depending on assumptions about what constitutes regulatory costs.<sup>12</sup> For example, some economists believe that transfers (e.g., the added cost a consumer pays for goods in the marketplace because of agricultural price supports) and process costs (e.g., costs associated with completing tax returns) should not be included in measures of total regulatory costs--two factors that account for more than half of some estimates.

Similarly, measures of regulatory costs for individual businesses depend on the assumptions used in the analysis. For example, although a business may be able to provide data on the overall cost of its health and safety programs, it may not be able to differentiate costs associated with regulatory compliance from costs it incurs in the normal course of business in order to protect its employees. A more accurate measure of regulatory

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<sup>11</sup>See, for example, Thomas D. Hopkins, Cost of Regulation, A Report to the Regulatory Information Service Center, August 1991; and "Federal Regulatory Burdens," RIT Public Policy Working Paper, Rochester, N.Y.: Rochester Institute of Technology, 1993.

<sup>12</sup>Regulatory Reform: Information on Costs, Cost-Effectiveness, and Mandated Deadlines for Regulations (GAO/PEMD-95-18BR, Mar. 8, 1995).

costs would be costs a business incurs that are over and above what it would incur without federal regulations.

Therefore, although changes in regulatory burden can be a key indicator of the success or failure of the administration's regulatory initiatives, the definition and measurement of that burden is very difficult. Whatever measures are used, all stakeholders--Congress, the administration, regulated businesses, and others--should be involved in determining how regulatory burden will be assessed. It is only with an agreed-upon definition and measurement process that a meaningful assessment can be provided of the administration's burden reduction efforts.

#### Regulatory Outcomes

Several of the administration's regulatory reform initiatives attempt to focus regulatory action on the achievement of outcomes rather than procedural compliance. For example, one of the principles Executive Order 12866 established was that agencies should, to the extent feasible, "specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt." The President's March 4, 1995, memo stated that a focus on results, not process and punishment, was an integral part of the administration's regulatory reform initiative. One of the principles FDA reportedly followed in reforming its procedures and requirements was the use of

performance standards, not "command and control" regulations, as much as possible. The most recent announcement of regulatory changes at HCFA included changes to "current regulations that focus solely on requirements for measuring processes, rather than outcomes of care." Instead, HCFA is to develop outcomes-based performance standards and is to measure its progress toward the achievement of those standards.

We believe that this focus on outcomes rather than solely procedural compliance is a positive step. Although process measure may also be of value, it is more important that a regulated entity achieve a desired goal (e.g., reduced levels of pollution or a safer working environment) than it comply with specific procedural steps that presumably lead to the achievement of that goal. Some regulated entities may be able to develop more efficient ways to achieve agencies' goals using alternative procedures. It is also more important that regulatory agencies focus on measuring whether they are achieving their missions than counting how many inspections have been made or how many enforcement actions have been taken.

For agencies to achieve this focus on outcomes, new types of data will need to be developed. For example, rather than count the number of procedural violations that are found during an inspection, outcome-oriented agencies would focus on measures of performance, such as environmental quality or worker safety.

Because of these new data needs and because this focus on outcomes represents a very different orientation for regulatory agencies, it will probably take some time before these changes can be fully realized.

The Government Performance and Results Act of 1993 (GPRA) charged federal agencies with developing outcome-based goals and performance measures for all of their programs. As the President noted in his March 4, 1995, memo, GPRA applies to agencies' regulatory programs and therefore requires agencies to develop clear statements of what their regulations are intended to accomplish. Some agencies are beginning to do so, as can be seen in the following examples.

- o The National Highway Traffic Safety Administration (NHTSA) as a whole is a pilot project under GPRA. NHTSA is measuring the effectiveness of its regulatory programs against its overall goals, which include reducing motor vehicle fatality and injury rates and decreases in alcohol involvement in crashes.
- o The Coast Guard's Marine Safety and Security program's 5-year goals include reducing accidental deaths and injuries from maritime casualties and the risk of passenger vessel casualty with major loss of life by 20 percent.

However, many of the regulatory agencies' performance goals are still focused on outputs (e.g., the number of inspections completed, the number of fines issued, the number of regulations produced), not outcomes. Agencies are not accustomed to measuring outcomes, and measures of outcomes are often much more difficult to develop than are process measures. As a result, it may take years for some agencies to shift their regulatory focus.

GPRA recognizes the time needed to change agencies' perspective by not requiring the submission of performance plans until the fall of 1997 and the submission of annual program performance reports until March 31, 2000. Although the development of results-oriented goals and measures of regulatory performance may be slow in coming, we believe they are essential to any assessment of regulatory reform. As was the case concerning the development of measures of regulatory burden, we believe that all stakeholders (Congress, agencies, the regulated public, and potential beneficiaries) should be involved in the development of these goals and measures.

## CONCLUSIONS

Burden reduction and a focus on agencies' outcomes are two crosscutting themes that appear to run through the administration's regulatory reform proposals. There may be others that the Committee or Congress can identify and would

chose to use in assessing the administration's efforts. For example, the Committee may want to focus its efforts on whether or not the administration is consulting with the business community in the development and administration of its regulatory agenda--creating the "grassroots partnerships" and consensual rulemaking that were described in the President's March 4, 1995, memo. Whatever approach is used, I would urge this Committee to think carefully about how concepts such as regulatory burden and outcomes are defined and measured before using them to determine whether particular initiatives have succeeded or failed.

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Madam Chair, this concludes my prepared statement. I would be pleased to answer any questions.



ATTACHMENT I

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SELECTED GAO PRODUCTS ON REGULATORY ISSUES

Regulatory Reform: Information on Costs, Cost-Effectiveness, and Mandated Deadlines for Regulations (GAO/PEMD-95-18BR, Mar. 8, 1995).

Tax System Burden: Tax Compliance Burden Faced by Business Taxpayers (GAO/T-GGD-95-42, Dec. 9, 1994).

Environmental Regulation: Differences Remain Between EPA and OMB Over Paperwork Requirements (GAO/RCED-94-254, Aug. 23, 1994).

Workplace Regulation: Information on Selected Employer and Union Experiences (GAO/HEHS-94-138, June 30, 1994). Volumes I&II

Paperwork Reduction Act: Opportunity to Strengthen Government's Management of Information Technology (GAO/T-AIMD/GGD-94-126, May 19, 1994).

Regulatory Flexibility Act: Status of Agencies' Compliance (GAO/GGD-94-105, Apr. 27, 1994).

Paperwork Reduction: Reported Burden Hour Increases Reflect New Estimate, Not Actual Changes (GAO/PEMD-94-3, Dec. 6, 1993).

Regulatory Burden: Recent Studies, Industry Issues, and Agency Initiatives (GAO/GGD-94-28, Dec. 13, 1993).

Paperwork Reduction: Agency Responses to Recent Court Decisions (GAO/PEMD-93-5, Feb. 3, 1993).

Risk-Risk Analysis: OMB's Review of a Proposed OSHA Rule (GAO/PEMD-92-33, July 2, 1992).

IMPLEMENTATION STATUS OF NPR REGULATORY RECOMMENDATIONS

In our December 1994 report on the implementation of NPR's recommendations, we placed each of the 384 recommendations into 1 of 6 implementation categories:

- (1) Fully Implemented. The entire recommendation and/or all action items in a related accompanying report have been fulfilled.
- (2) Partially Implemented. The recommendation and/or associated action items have been implemented in part but not in total.
- (3) Not Implemented--Action Taken. No part of the recommendation or associated action items has been implemented, but some action has been taken to implement the recommendation and/or the action items. For example, if legislation has been introduced that would address the recommendation but has not been enacted into law, we categorized the recommendation as "not implemented--action taken."
- (4) Not Implemented--No Action Taken. No part of the recommendation or associated action items has been implemented, and no action has occurred toward the implementation of the recommendation or the action items.
- (5) Insufficient Information. Insufficient or conflicting evidence prevented us from determining the status of implementation.
- (6) Other. Implementation action has occurred that, while not responsive to the letter of the recommendation, is generally consistent with its purpose.

We contacted agency officials identified by NPR as responsible for each recommendation and determined what had been done to implement the recommendations. Unless otherwise noted, the data were collected as of September 7, 1994--the 1-year anniversary of the NPR report.

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NPR RECOMMENDATIONS ON  
IMPROVING REGULATORY SYSTEMS

NPR made 10 recommendations designed to improve federal regulatory systems in general.

REG01: Create an Interagency Regulatory Coordinating Group  
 Create an interagency Regulatory Coordinating Group to share information and coordinate approaches to regulatory issues.  
 (Fully Implemented)

REG02: Encourage More Innovative Approaches to Regulation  
 Use innovative regulatory approaches and develop a Deskbook on Regulatory Design. (Partially Implemented)

REG03: Encourage Consensus-Based Rulemaking  
 Encourage agencies to use negotiated rulemaking more frequently in developing new rules. (Partially Implemented)

REG04: Enhance Public Awareness and Participation  
 Use information technology and other techniques to increase opportunities for early, frequent and interactive public participation during the rulemaking process and to increase program evaluation efforts. (Partially Implemented)

REG05: Streamline Agency Rulemaking Procedures  
 Streamline internal agency rulemaking procedures, use "direct final" rulemaking for noncontroversial rules and expedite treatment of rulemaking petitions. (Partially Implemented)

REG06: Encourage Alternative Dispute Resolution When Enforcing Regulations  
 Increase the use of alternative means of dispute resolution.  
 (Partially Implemented)

REG07: Rank Risks and Engage in "Anticipatory" Regulatory Planning  
 Rank the seriousness of environmental, health or safety risks and develop anticipatory approaches to regulatory problems.  
 (Partially Implemented)

REG08: Improve Regulatory Science  
 Create science advisory boards for those regulatory agencies that depend heavily on scientific information and judgments. (Not Implemented--Action Taken)

REG09: Improve Agency and Congressional Relationships  
 Encourage agencies to establish technical drafting services for congressional committees and subcommittees. (Not Implemented--No Action Taken)

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REG10: Provide Better Training and Incentives for Regulators

Establish a basic training program for Presidential appointees assigned to regulatory agencies and expand existing training programs to cover career staff not currently being trained. (Not Implemented--Action Taken)

AGENCY-SPECIFIC NPR RECOMMENDATIONS  
WITH REGULATORY/BURDEN REDUCTION FOCUS

NPR made a number of agency specific recommendations with a regulatory or burden-reduction focus. Agencies to whom these recommendations were directed included the U.S. Department of Agriculture (USDA), the Department of Commerce (DOC), the Environmental Protection Agency (EPA), the Department of Health and Human Services (HHS), the Department of Interior (DOI), the Department of Labor (DOL), the Small Business Administration (SBA), the Department of Transportation (DOT), and the Department of the Treasury (TRE).

USDA04: Implement a Consolidated Farm Management Plan

The farm management plan proposed by Secretary Espy provides an opportunity to simplify regulations for farm management and is a good way to consolidate competing requirements into a single plan for each farm. (Not Implemented--Action Taken)

DOC11: Eliminate Legislative Barriers to the Exchange of Business Data Among Federal Statistical Agencies

Eliminate legislative barriers to the exchange of business data among federal agencies (the Census Bureau, Bureau of Labor Statistics, and Bureau of Economic Analysis) to reduce the reporting burden on American business. (Not Implemented--Action Taken)

DOD01: Rewrite Policy Directives to Include Better Guidance and Fewer Procedures

DOD should clarify policy directives and procedures to reduce administrative burden and unnecessary regulatory controls. (Partially Implemented)

EPA01: Improve Environmental Protection Through Increased Flexibility for Local Government

EPA should amend the regulations it determines are most troublesome for local governments pursuant to the Regulatory Flexibility Act of 1980. The goal is to provide alternative, flexible approaches to meeting environmental mandates. (Partially Implemented)

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EPA02: Streamline EPA's Permit Program

Streamlining efforts include establishing a permit clearinghouse to serve as a single point of contact and piloting a cross-program permit tracking system. (Not Implemented--Action Taken)

EPA03: Shift EPA's Emphasis Toward Pollution Prevention and Away from Pollution Control

EPA needs to emphasize pollution prevention by implementing an effective pollution prevention strategy that includes amending regulations and motivating the private sector to invest in cleaner, less polluting technologies and practices. (Not Implemented--Action Taken)

EPA04: Promote the Use of Economic and Market-Based Approaches to Reduce Water Pollution

EPA should work with Congress to propose language amending the Clean Water Act to explicitly encourage market-based approaches to reduce water pollution. EPA should also identify wastewater discharge fees that could be included in the Clean Water Act reauthorization. (Not Implemented--Action Taken)

EPA05: Increase Private Sector Partnerships to Accelerate Development of Innovative Technologies

NPR recommends that EPA develop an action plan with specific milestones for improving the regulatory and statutory climate for innovative technologies. (Not Implemented--Action Taken)

HHS02: Reengineer the HHS Process for Issuing Regulations

HHS should improve the timeliness and quality of regulations issued and should involve stakeholders in the development of regulations. (Not Implemented--Action Taken)

DOI02: Redefine Federal Oversight of Coal Mine Regulation

To overcome organizational problems that inhibit an effective state-federal relationship, federal oversight of coal mine regulations should be redefined. (Not Implemented--Action Taken)

DOL03: Expand Negotiated Rulemaking and Improve Up-front Teamwork on Regulations

DOL should provide administrative guidance more quickly and cheaply through negotiated rulemaking and a streamlined team approach to the rules development process. (Not Implemented--Action Taken)

DOL06: Amend the ERISA Requirement for Summary Plan Descriptions

The filing of summary plan descriptions by employee benefit plan administrators with DOL is intended to make the plans more readily available for participants and beneficiaries. Since requests for copies are received on only about one percent, the cost to maintain the system and the administrative burden on

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employer; far outweighs the public benefit. (Not Implemented--Action Taken)

DOL07: Redirect the Mine Safety and Health Administration's Role in Mine Equipment Regulation

Shifting the Mine Safety and Health Administration's regulatory role from one of in-house testing to one of on-site quality assurance would provide increased economic benefits to the mining industry and would allow DOL to redirect resources. (Partially Implemented)

DOL10: Refocus the Responsibility for Ensuring Workplace Safety and Health

This recommendation proposes to shift responsibility for workplace safety and health to employers by issuing regulations requiring self-inspections and implementing a sliding scale of incentives and penalties to ensure safety standards are met. (Not Implemented--Action Taken)

SBA01: Allow Judicial Review of the Regulatory Flexibility Act

Allow access to the courts when federal agencies develop rules that fail to properly examine alternatives that will lessen the burden on small businesses. (Not Implemented--Action Taken)

SBA04: Examine Federal Guidelines for Small Business Lending Requirements

The federal government should examine the guidelines bank regulators set for small business lending by financial institutions to ensure that capital is available without undue barriers while maintaining the integrity of the financial institutions. (Not Implemented--Action Taken)

DOT06: Encourage Innovations in Automotive Safety

NPR recommends allowing the National Highway Traffic Safety Administration to grant more exemptions from highway safety standards to develop new safety systems. (Not Implemented--Action Taken)

TRE05: Simplify Employer Wage Reporting

The administrative burden caused by our current employer wage-reporting requirements could be reduced while maintaining or improving the effectiveness of government operations by developing and implementing a simplified wage reporting system. (Partially Implemented)

TRE09: Modernize the IRS

The IRS Tax System Modernization (TSM) initiative, currently in its initial stages, would ease taxpayer burdens due to manual return processing and inaccessible information, and enable IRS to provide a level of service comparable to private sector financial



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institutions. (Partially Implemented)

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## Remarks on Regulatory Reform February 21, 1995

Thank you very much. I want to begin by thanking the Vice President for his leadership on this issue. When we formed our partnership back in 1992, and we talked about all the things we wanted to do, and we had a series of long, fascinating conversations in which he talked to me about science and technology and the environment, and I talked to him about education and economic development and reinventing Government, and I told him that when I was a Governor, every couple of years we'd eliminate an agency just to see if anybody noticed. [Laughter] And normally, they didn't. [Laughter] And they never did complain when they did notice.

And I asked him if he would—then after we actually won and came here, I asked him if he would get involved with this and really try to make it work for the American people, because I was convinced that there was so much justifiable anxiety out there among our people about the way Government operates, that unless we could change that we'd never be able to maintain the faith of the taxpayers and the integrity of the Federal Government.

I also asked him to do it because he was the only person I could trust to read all 150,000 pages in the Code of Federal Regulations. [Laughter] At this very moment, Tipper is being treated for insomnia at the

Georgetown Hospital—[laughter]—but he's just about through.

I also want to thank all of you who are here who represent really the future of the Federal Government and the future of its ability to maintain the confidence of the American people that we're protecting and promoting their interest and doing it in a way that reinforces instead of defies common sense.

I believe very strongly in the cause of regulatory reform. And as the Vice President said, we've been working at it for about 2 years now. I also believe that we have to hold fast to certain standards. I believe we can bring back common sense and reduce hassle without stripping away safeguards for our children, our workers, our families.

There are proposals pending in the Congress today which go beyond reform to roll back, arguably even to wrecking, and I oppose them. But I believe we have the burden of reform. And that means we have to change in fundamental ways the culture of regulation that has permeated this Government throughout administrations, from administration to administration, from Republicans to Democrats occupying the White House.

The Federal Government to many people is not the President of the United States. It's the person who shows up on the doorstep to check out the bank records or the safety in the factory or the integrity of the work-

place or how the nursing home is being run. I believe that we have a serious obligation in this administration to work with the Congress to reduce the burden of regulation and to increase the protection to the public. And we have an obligation on our own to do what we can to change the destructive elements of the culture of regulation that has built up over time and energize the legitimate and decent things that we should be doing here in Washington and, more importantly, that should be being done all across the country.

I thank those who have come here today as examples of the progress which has been made. We do want to get rid of yesterday's Government so we can meet the demands of this new time. We do want results, not rules. We want leaner Government, not meaner Government. At a time when I have said our obligation should be to create more opportunity and also to provide more responsibility, our responsibility here is to expand opportunity, empower people to make the most of their own lives, enhance security, and to do it all while we are shrinking the Federal bureaucracy, to give the people a Government as effective as our finest private companies, to give our taxpayers their money's worth.

Now, everybody has talked about this for years now, but in fact, we have taken steps in the right direction. Already, we have reduced Federal spending by over a quarter of a trillion dollars, reduced the size of the Federal payroll by over 100,000. We are on our way to a reduction in excess of 250,000 in the Federal work force, which will give us by the end of this decade the smallest Federal Government since the Kennedy administration.

Vice President Gore's leadership in the reinventing Government initiatives have already saved taxpayers \$63 billion. Some of the more visible changes have been well-noted: the reduction of offices in the Agriculture Department by more than 1,200, throwing away the Government's 10,000-page personnel manual. I haven't heard a single soul complain about it. [Laughter] Nobody has said, "You know, I never thought about the personnel manual, but I just can't bear to live without it now." [Laughter] I haven't heard it a single place.

We've worked hard to solve problems that had been long ignored: reforming the pension benefit guarantee system to secure the pensions of 8.5 million working Americans whose pensions and retirement were at risk, reforming Government procurement so that the days of the \$500 hammer and the \$10 glass ashtray are over, turning FEMA from a disaster into a disaster relief agency, breaking gridlock on bills that hung around in Congress for years, 6 or 7 years, like the family leave law, the motor voter law, the Brady bill, and the crime bill.

But maybe the most stubborn problem we face is this problem of regulation. How do

we do what we're supposed to do here? How do we help to reinforce the social contract and do our part to work with the private sector to protect the legitimate interests of the American people without literally taking

leave of our senses and doing things that drive people up the wall but don't make them safer.

We all want the benefits of regulation. We all want clean air and clean water and safe food and toys that our children can play with. But let's face it, we all know the regulatory system needs repair. Too often the rule writers here in Washington have such detailed lists of do's and don'ts that the do's and don'ts undermine the very objectives they seek to achieve, when clear goals and operation for cooperation would work better. Too often, especially small businesses face a profusion of overlapping and sometimes conflicting rules. We've tried to set up an effective procedure here for resolving those conflicts, but it drives people crazy. I had somebody just yesterday mention being subject to two directly conflicting rules from two Federal agencies.

We have to move beyond the point where Washington is, to use the Vice President's phrase, the sort of national nanny that can always tell businesses, consumers, and workers not only what to do but exactly how to do it, when, and with a 100-page guideline. And as has already been said, we have begun to take the first steps in doing this.

You've heard about what the Comptroller of the Currency has done. I can tell you one thing: When I was out in New Hampshire in 1992, I heard more grief about the regulation of the private sector by the Comptroller of the Currency than any other single thing. And now every time I go to New England, they say, "We're making money. We're making loans, and we can function, because we finally got somebody down there in Washington who understands how to have responsible and safe banking regulations and still promote economic growth." I hear it every time I go up there, and I thank you, sir, for what you've done on that.

We've got industry and environmentalists alike supporting Carol Browner and the EPA's Common Sense Initiative and our proposed overhauls of the Superfund and the safe drinking water laws which I pray will pass in this session of Congress, and I believe they will, would increase both flexibility and improve results for consumers. We've

slashed the small business loan form from an inch thick to a single page.

We haven't had to wait for legislation to streamline all regulations. We've asked regulators and instructed them to use market mechanisms whenever possible and to open up the regulatory process to more public scrutiny and involvement.

HHS has cut its block grant application form in half for maternal and child health programs. EPA is exploring using enforceable contracts instead of regulation to eliminate potential risk. The FAA is reviewing all of its rules to identify those that are out of sync with state-of-the-art technology practices. And there's nothing more maddening to a businessman than being told one thing on Monday by one governmental agency and another thing on Tuesday by another.

Our Labor Department did something unusual about that as it relates to regulations that affect both labor and the environment. They talked to EPA before issuing their asbestos rules, a stunning departure from past practices. So that at least there, there are now no contradictory instructions.

We're also trying to bring common sense in other ways, targeting high-risk areas, focusing, for example, on lead in day care centers rather than aircraft hangars. We're making school lunches more nutritious but reducing the forms the local schools have to fill out to qualify for the program.

Today we're attempting to work with Members of both parties in Congress to further reform regulation. Soon the Congress will pass legislation so that Washington won't order States to solve problems without giving them the resources to do it. We're working together to pass legislation that ensures that regulation is especially sensitive to the needs of small businesses and to reduce paperwork. But we must clearly do more. We must ask ourselves some questions that are very, very important. And I want to emphasize those here.

Would you take the card down? This is why I asked all of you here, not just to be between me and the press corps. [Laughter]

Today, this is what we are now going to do. I am instructing all regulators to go over every single regulation and cut those regulations which are obsolete, to work to reward results, not redtape, to get out of Washington and go out into the country to create grass-roots partnerships with the people who are subject to these regulations and to negotiate rather than dictate wherever possible.

We should ask ourselves—let me go through each one—on the regulations, we should ask ourselves: Do we really need this regulation? Could private businesses do this just as well with some accountability to us? Could State or local government do the job better, making Federal regulation not necessary? I want to really work through these things, and I want you, all of you, to review all these regulations and make a report to me by June 1st, along with any legislative recommendations you need to implement the changes that would be necessary to reduce the regulatory burden on the American people.

Second, I want every one of you to change the way we measure the performance of your agencies and the front-line regulators. I love

the comment the Vice President had about people in Customs being evaluated about how many boxes they detain. I believe safety inspections should be judged, for example, by how many companies on their watch comply, not by how many citations our regulators write. We ought to be interested in results, not process.

Third, I want to convene immediately groups consisting of the frontline regulators and the people affected by their regulations, not lawyers talking to lawyers in Washington or even the rest of us talking to each other in Washington but a conversation that actually takes place around the country, at our cleanup sites, our factories, and our ports. Where this has been done, as we saw here, we have seen stunning results. Most people in business in this country know that there is a reason for these regulations, for these areas of regulations. And most people would be more than happy to work to find a way that would reduce hassle and still achieve the public interest we seek to achieve.

Fourth, I want to move from a process where lawyers write volumes to one where people create partnerships based on common objectives and common sense. I want each regulatory agency head to submit to the White House a list of pending procedures that can be converted into consensual negotiations.

Now, I want to say this again. This is very important. By June 1st, I want to know which obsolete regulations we can cut and which ones you can't cut without help from Congress. We want a system that will reward results, not redtape. We want to get out of Washington and talk to people who are doing the regulating and who are being regulated on the frontline. That is the only way we will ever change the culture that bothers people. We could stay here from now to kingdom come in this room, and we would never get that done.

And finally, we need to look for the areas in which we can honestly negotiate to produce the desired results rather than dictate.

Finally, the Vice President has been conducting a serious review of regulation in the areas of greatest concern. In the coming months, he will present to me a series of recommendations for regulatory reform on the environment, on health, on food, on financial institutions, on worker safety. And when appropriate and necessary, I will present them to the Congress.

This is what we are going to do, and it is high time. But let me also emphasize what we are not going to do. We have to recognize that, done right, regulation gives our children safer toys and food, protects our workers from injury, protects families from pollution, and that when we fail, it can have disastrous consequences.

The American economy is the envy of the world, in part because of the public health protections put in place over the last 30 years. Toxic emissions by factories have dropped by more than 50 percent, and lead levels in children's blood have dropped by 70 percent in three decades. Lake Erie, once declared dead, is now teeming with fish. One hundred and twelve thousand people survived car crashes because of auto safety rules. Workplace deaths are down by 50 percent since OSHA was created. Our food is safer, and we know its true nutritional content because the Government stood up for public interests.

These protections are still needed. There's not too little consumer fraud. Toys are not too safe. The environment is still not able to protect itself. Some would use the need for reform as a pretext to gut vital consumer, worker, environmental protections, even things that protect business itself. They don't want reform; they really want rigor mortis.

Some in Congress are pushing a collection of proposals that, taken together, would bring Federal protection of public health and safety to a halt. Later this week, the House will vote on an across-the-board freeze on all Federal regulations. It sounds good, but this stops in its tracks Federal action that protects the environment, protects consumers, and protects workers. For example, it would stop the Government from allocating rights to commercial fishermen. A person who's worked with those folks in Louisiana is here today. It would stop the Government from authorizing burials at Arlington Cemetery. It would stop good regulations, bad regulations, in-between regulations, all regulations. No judgment—sounds good but no judgment. It would even cancel the duck hunting season. [Laughter] That gives me some hope that it will not prevail. [Laughter] It would stop new protection from deadly bacteria in our drinking water, stop safer meat and poultry, stop safer cars, stop final implementation of the law that lets parents take a leave to care for a sick child. It would undermine what we're trying to do to promote safety in commuter airlines. If a moratorium takes effect, all these benefits will be on hold for the foreseeable future. Therefore, to me, a moratorium is not acceptable.

I agree with the Republicans in Congress on many things. We do need to change this system. We have been working for 2 years to change it, and believe you me, I know we've got a long way to go. But there is a right way to do it and a wrong way to do it. We can agree on many things, but I am convinced that a moratorium would hurt the broad interests of the American people and would benefit only certain narrow interests who, in the moment, think they would be undermined by having this or that particular regulation pass.



The best thing to do is to change the culture of regulation, to do the four things that I have outlined, not to put these things on hold but to put these things in high gear.

That is the right way to do this. I still believe that, working together with Congress, we can achieve real and balanced regulatory reform. But we shouldn't go too far. For example, we want all agencies to carefully compare the cost and benefits of regulations so that we don't impose any unnecessary burdens on business.

But the Contract With America, literally read, could pile so many new requirements on Government that nothing would ever get done. It would add to the very things that people have been complaining about for years—too many lawsuits, everything winds up in court. The contract, literally read, would override every single health and safety law in the books; distort the process by giving industry-paid scientists undue influence over rules that govern their employers; in the name of private property could literally bust the budget by requiring the Government to pay polluters every time an environmental law puts limits on profits.

These are extreme proposals. They go too far. They would cost lives and dollars. A small army of special interest lobbyists knows they can never get away with an outright repeal of consumer or environmental protection. But why bother if you can paralyze the Government by process? Surely, after years and years and years of people screaming about excessive governmental process, we won't just go to an even bigger round of process to tilt the process itself in another direction. We cannot strip away safeguards for families in this country.

Here in our audience today are real people on whose behalf we act or we might have acted. There's a father in this audience whose son died from *E. coli* bacteria in food that might have been discovered if our proposed rule had been in effect when his son ate the contaminated food. There are people here whose lives were saved by air bags. Let's not forget these people as we cut redtape and bureaucracy. There's a woman here who is a breast cancer survivor who lost a child to cancer, who lives in an area unusually high in the density of people who suffer from cancer. Let's not forget the kind of work that still needs to be done.

At every stage in the history of this country, our Government has always had to

change to meet the needs of changing times. And we need to change now. We need a Government that's smaller and more entrepreneurial, that provides a lot less hassle, that realizes that there are an awful lot of people out there in the private sector who have enlightened views and they want to do the right thing and they need to be helped instead of hindered in that.

I would never defend the culture of this community when it is wrong. But let us also not forget that as we strive for a Government that is costing less and is more flexible, that is producing better results and not more rules, that we have a job to do for the American people and that people are entitled to protection. So I echo again what the Vice President said earlier: Reform, yes. Bring it on. Roll back, no. There is too much good to do to turn this noble enterprise into something that we would live to regret. Let us instead work to do what must be done.

Thank you very much.

NOTE: The President spoke at 12:40 p.m. in Room 450 of the Old Executive Office Building.



## THE WHITE HOUSE

WASHINGTON

March 4, 1995

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES

SUBJECT: Regulatory Reinvention Initiative

Last week, I announced this Administration's plans for further reform of the Federal regulatory system. This is a central part of reinventing our Government. All Americans want the benefits of effective regulation: clean water, safe workplaces, wholesome food, sound financial institutions. But, too often the rules are drafted with such detailed lists of dos and don'ts that the objectives they seek to achieve are undermined. Clear goals and cooperation would work better. Too often, businesses, especially small ones, face a profusion of overlapping and sometimes conflicting rules.

We have already made real progress in reforming regulation. This memorandum will build on the regulatory philosophy set forth in Executive Order No. 12866 of September 30, 1993, "Regulatory Planning and Review," which is premised on the recognition of the legitimate role of government to govern, but to do so in a focused, tailored, and sensible way.

In the year and a half since that order was signed, we have opened the rulemaking process to the public, we have increased cooperation and coordination among the Federal agencies, and we have seen good processes produce good decisions.

However, not all agencies have taken the steps necessary to implement regulatory reform. To reaffirm and implement the principles of Executive Order No. 12866, regulatory reform must be a top priority.

Accordingly, I direct you to focus on the following four steps, which are an integral part of our ongoing Regulatory Reform Initiative.

FIRST: CUT OBSOLETE REGULATIONS

I direct you to conduct a page-by-page review of all of your agency regulations now in force and eliminate or revise those that are outdated or otherwise in need of reform. Your review should include careful consideration of at least the following issues:

- o Is this regulation obsolete?
- o Could its intended goal be achieved in more efficient, less intrusive ways?
- o Are there better private sector alternatives, such as market mechanisms, that can better achieve the public good envisioned by the regulation?
- o Could private business, setting its own standards and being subject to public accountability, do the job as well?
- o Could the States or local governments do the job, making Federal regulation unnecessary?

This review should build on the work already being done by your agencies under section 5 of Executive Order No. 12866.

Your regulatory review task force should be headed by one of your appointees who should be given your full support and should, to the extent practicable, be freed of other duties.

I further direct you to deliver to me by June 1 a list of regulations that you plan to eliminate or modify with a copy of the report sent to Sally Katzen, Administrator of the Office of Information and Regulatory Affairs (OIRA). The list should distinguish between the regulations that can be modified or eliminated administratively and those that require legislative authority for modification or elimination.

SECOND: REWARD RESULTS, NOT RED TAPE

I direct you to change the way you measure the performance of both your agency and your frontline regulators so as to focus on results, not process and punishment. For example, Occupational Safety and Health Administration (OSHA) inspectors should not be evaluated by the number of citations they write, nor should officials of the Consumer Product Safety Commission be judged by the number of boxes of consumer goods that are detained in shipment. This change in measurement should involve a two-step process.

First, you should identify appropriate performance measures and prepare a draft in clear, understandable terms, of the results you are seeking to achieve through your regulatory program. The draft should be circulated to frontline regulators for review and comment. This is the same work needed to meet the requirements of the Government Performance and Results Act of 1993.

Second, you should evaluate and reward employees based on the realization of those measures/goals.

By no later than June 1, I direct you to (a) eliminate all internal personnel performance measures based on process (number of visits made, etc.) and punishment (number of violations found, amount of fines levied, etc.), and (b) provide to the National Performance Review (NPR) staff a catalogue of the changes that you are making in existing internal performance evaluations to reward employees. You should also provide material describing shifts in resource allocation from enforcement to compliance.

### THIRD: GET OUT OF WASHINGTON AND CREATE GRASSROOTS PARTNERSHIPS

I direct you to promptly convene groups consisting of frontline regulators and the people affected by their regulations. These conversations should take place around the country -- at our cleanup sites, our factories, our ports.

I further direct you to submit a schedule of your planned meetings to the NPR staff by March 30 and work with NPR in following through on those meetings.

### FOURTH: NEGOTIATE. DON'T DICTATE

It is time to move from a process where lawyers and bureaucrats write volumes of regulations to one where people work in partnership to issue sensible regulations that impose the least burden without sacrificing rational and necessary protections. In September 1993, I asked each of you to identify at least one rule that could be conducted through negotiated rulemaking (or to explain why such could not be done) in order to promote consensual rulemaking as opposed to the more traditional rulemaking that has dominated the regulatory arena.

I now direct you to expand substantially your efforts to promote consensual rulemaking. To this end, you should submit to OIRA, no later than March 30, a list of upcoming rulemakings that can be converted into negotiated rulemakings. I have directed Sally Katzen to review your lists with a view toward making clear to the regulated community that we want to work together productively on even the most difficult subjects.

To facilitate our ability to learn from those affected by regulation, I will amend Executive Order No. 12838 (which requires agencies to reduce the number of advisory committees that they use and to limit the future use of such committees) to allow for advisory committees established for negotiated rulemakings.

I also intend to take additional steps to increase our ability to learn from those affected by regulation. While many laws and rules that limit the ability of regulators to talk with those being regulated were imposed to curb abuse, they now often serve as a barrier to meaningful communication between the regulators and the regulated. To address this problem, and to promote consensus building and a less adversarial environment, I direct you to review all of your administrative ex parte rules and eliminate any that restrict communication prior to the publication of a proposed rule -- other than rules requiring the simple disclosure of the time, place, purpose, and participants of meetings (as in Executive Order No. 12866). We will also begin drafting legislation that will carve out exemptions to the Federal Advisory Committee Act to promote a better understanding of the issues, such as exemptions for meetings with State/local/tribal governments and with scientific or technical advisors.

I also ask you to think about other ways to promote better communication, consensus building, and a less adversarial environment. Please send your ideas to the Office of the Vice President.

As I said on Tuesday, February 21, 1995, you are to make regulatory reform a top priority. Good government demands it and your full cooperation is crucial.

William J. Clinton

**Remarks on Regulatory Reform in  
Arlington, Virginia  
March 16, 1995**

*The President.* Thank you, Stu, and, ladies and gentlemen, thank you. Let me first of all say how delighted I am to be in this wonderful place. Among other things, they do their printing here with soy ink, and that's really why we're here, because I come from Arkansas, and my—[laughter]—my farmer

friends grow a lot of soybeans, and we're always looking for new markets, and we're just trying to support responsible people who are using great ink.

This is a wonderful story today, and I thank all of these people for hosting us, Stu and all of his partners behind us, to make a point that, to me, is very, very important. You heard the Vice President say that last month I called together the heads of the Federal regulatory agencies and told them to begin a root and branch examination of how we regulate the American people in all the various ways that we do.

I wanted to make this the next big part of the reinventing Government process that the Vice President has overseen so well for the last 2 years. And today, we want to announce the fruits of that process. But it's important to remember what the purpose is. Most Americans are honest people. The free enterprise system brings us great benefits. But we know we have certain things in common that we have to pursue through the Government that we all are responsible for.

The question is: How can we do it best? Today, we're announcing basically two sets of changes: First of all, some Government-wide regulatory reforms that will cut back on paperwork and trust honest business people as partners, not adversaries and, second, significant reforms in the way we protect the environment and the way we assure safe and high quality drugs and medical devices.

The philosophy that guided these changes is pretty simple: Protect people, not bureaucracy; promote results, not rules; get action, not rhetoric; wherever possible, try to embrace common sense; it will confound your enemies and elate your friends. [Laughter]

Since I became President, I have worked hard on this. You know, I spent 12 years as a Governor of a State where I got to deal with the regulatory apparatus of the Federal Government as it related to both State Government and to every friend I had in every walk of life in my State. And I found that in the environmental area, for example, we often had both the environmentalists and the people who were in business both frustrated by some things that were going on. And I could give you lots of other examples, and

all of you can, as well, from your own personal experience.

Our goal is to get rid of yesterday's Government so that we're capable of meeting the problems of today and the challenges of tomorrow. We want a Government that offers opportunity, demands responsibility, and shrinks bureaucracy, one that embodies the New Covenant I've been talking about, more opportunity and more responsibility with a less bureaucratic Government. I think Government can be as innovative as the best of our private sector businesses. I think Government can discard volume after volume of rules and, instead, set clear goals and challenge people to come up with their own ways to meet them. That kind of Government will be very different from the old one-size-fits-all bureaucracy. But it also would be different from the new proposals for one-size-fits-all deregulation and cutbacks.

I want to see a different approach. I want a Government that is limited but effective, that is lean but not mean, that does what it should do better and simply stops doing things that it shouldn't be doing in the first place, that protects consumers and workers, the environment, without burdening business, choking innovation, or wasting the money of the American taxpayers.

We do need to reduce paperwork and unnecessary regulation. I don't think we want to freeze efforts to protect our children from unsafe toys or unsafe food. We do need to carefully analyze the risks, the costs, the benefits of everything we do, but I don't think it's a better approach to pile on dozens of new procedural requirements. That will only run up legal bills and weaken the public trust. Paralysis by process is not common sense.

So as I said before, reform, yes, and let's do it with a bipartisan flare, but let's don't roll back our commitment to the things that make life worth living here. We all want water we can drink and air we can breathe, food we can eat, and a place we can work in and feel safe and secure. But we know that the way we have sought these goals through Government often, often has frustrated the very goals we seek. The way our regulatory system has grown into a dense jungle of rules and regulations, precise lists of

do this and don't do that, can trip up even the most well-intentioned business person.

Can you imagine a fellow like this running a shop like this on the cutting edge of the environment, is afraid to call the Federal Government for advice? There is no better example of what has been wrong. Here's a guy who's tried to do right, wants to do more right, and is afraid that if he does it, he'll be punished for doing it. It really is true that often in the Government no good deed goes



unpunished. [Laughter] So it's time to stop doing things that drive people up the wall.

A few weeks ago, my good friend the Governor of Florida, who is also on this journey with us and has talked to me for more than—oh, I don't know—10 years we've been working on these issues, long before I ever thought of running for President, gave me this remarkable book that is now sweeping the country, "The Death of Common Sense." It makes an interesting point, the book does. It says that in our entirely understandable and necessary desire to protect the public, we have put in place a system that very often requires those who are carrying it out to defy common sense, unduly burden private taxpayers, and undermine the very objectives we are seeking to achieve.

Now, the author of that book, Philip Howard, has made a major contribution to the American debate on this. He's here with us today. He has done some work with the Vice President's National Performance Review, and I'd like to ask him to stand and be recognized. And thank you, sir, for doing this. [Applause]

Over the last 2 years, we've tried to get this Government of ours into some kind of shape. We have lowered the deficit by \$600 billion, and we've reduced the size of the Federal bureaucracy by over 100,000. We're on the way to reducing the Federal work force by more than a quarter of a million. It'll be the smallest it's been since President Kennedy was here when our budgets are finally implemented.

Now, we've tried to do more than that. We've tried to do more than just cut. We've tried to change the way the Government works. We've tried to spend more money, for example, on education and training and research and technology, the things that we believe will raise incomes, offer more people opportunity, and protect the environment while we grow the economy. I don't think we should apologize for that. We should exercise judgment and common sense about what we cut and what we spend money on.

We also are trying to change the regulatory environment. I was proud to sign the first bill this new Congress passed, which applies to Congress most of the laws they impose on the private sector. I think that will have a very salutary impact on the deliberations of Congress.

We are about to get a bill out of the Congress which will restrict the ability of Congress to impose mandates on State and local governments that are unfunded; I think that is a good idea. And maybe most important of all, we're working hard, as the Vice President has said, to eliminate rules that are obsolete, to simplify rules that are too complicated, to cut paperwork wherever we can, in short, just to change the way Government works.

Most of the people I grew up with, who all write me with their great ideas now that I've become President, are just out there living in this country, making a living, raising their families, obeying the law, and doing the best they can. I believe their biggest objection to Government is not the size of it but the way it regulates, the way it operates in their own lives.

And I have done my best, relying on the extraordinary leadership of the Vice President and the National Performance Review staff and all the people who have been introduced here, particularly from the SBA and the EPA and the FDA and the Office of Management and Budget, to try to change this.

Let me just give you some examples. We want economic development. We've got the most active Commerce Department in American history. But the Commerce Department is also cutting the rules for businesses in half. That will also develop the economy. We want nutritious food, and the USDA has raised food safety standards, but they're also making it easier to import safe fruits and vegetables. We ought to repeal silly rules. The Department of the Interior just

eliminated feather import quotas for exotic birds and a lot of other things as well.

So what are we going to do now? Today we're announcing the first big steps of what I assure you is just the beginning of a process that we intend to continue for as long as we have the public trust. First, we want to do something that recognizes that most of the businesses in this country are small, most of them want to do the right thing, and most of the new jobs are being created by them. We want to get our enforcers out of the business of mindlessly writing traffic tickets and into the business of achieving results. We're going to let these regulators apply common sense.

Two of the three problems Mr. Howard talks about in his book are addressed here today. One is that in our attempt to try to tell people how we think the Government should regulate, we have tried to imagine all conceivable permutations of things that could occur and then write rules to cover them. The other is that we've been far more obsessed—the Government has in the past—with process than results. That's the general problem I might add, of Washington, DC, not confined entirely to the Government. [Laughter]

Today, we are ordering a Government-wide policy. Enforcers will be given the authority to waive up to 100 percent of punitive fines for small businesses so that a business person who acts in good faith can put his energy into fixing the problem, not fighting with a regulator. In other words, if they want to spend the fine money fixing the problem, better they should keep it and fix the problem than give it to the Government.



Similarly, regulators will be given the discretion to waive fines for small businesses altogether if it's a first-time violation and the firms quickly and sincerely move to correct the problem. Let me be clear: These changes will not be an excuse for violating criminal laws; they won't be an amnesty for businesses that harm public health; they won't enable people to undermine the safety of the public while their competitors play by the rules. But we will stop playing "gotcha" with decent, honest business people who want to be good citizens. Compliance, not punishment, should be our objective.

The second thing we want to do is to curb the Government's appetite for paperwork. We are going to have each agency allow regularly scheduled reports to the Government to be cut in half, unless there is some important public purpose that won't permit it. In other words, if people file quarterly reports, we want the agency to say file them twice a year, if they file them twice a year, file annual reports. The Vice President likes that. We'll leave more trees up, and we'll save more time for small business. Time is money. Time is the most important thing we have.

You know, we got rid of the Federal personnel manuals. I forget—the Vice President knows better than I do—I forget how many thousands of pages.

**The Vice President.** Ten thousand pages.

**The President.** Ten thousand pages. You know, I have yet to have the first Federal employee come up and attack me for that. [Laughter] I've yet to have the first citizen say, "How dare you waste my money. With this new arbitrary system, you got rid of these 10,000 pages. I can't sleep at night for thinking about it being gone." [Laughter] And believe me, nobody will notice this as long as we take care to protect the public health, the public safety, and the public interest.

The second thing I want to talk about are fundamental reforms in the area of the environment and drug and medical services. Environmental regulation touches every part of our lives. And this is a moment of transition in our environmental policy. The modern era began in 1970 with Earth Day, the passage of landmark legislation and the creation of the Environmental Protection Agency.

The results, we should never forget, are a great American success story, envied and copied around the world. Because we made a common commitment to protect the environment, people are living longer and living better, and we have a chance to pass the country along to our children and grandchildren in far better shape than would have been the case otherwise. But the methods that worked in the past aren't necessarily adequate to the present day.

Our environmental programs must work better and cost less to meet the challenges of the future. Today we are announcing a landmark package of 25 environmental re-

forms. Let me describe them in general terms.

First we recognize that market mechanisms generally make more sense than micromanagement by the Government. Letting utilities buy and sell their rights under the Clean Air Act, for example, has saved utilities and their customers \$2 billion and given us cleaner air. Today we will dramatically extend this market concept to other areas of clean air and water protection.

Second, too many businesses are afraid to come to the EPA for help in cleaning up their act because they're afraid they'll be punished. That's the story you just heard. We're going to open compliance centers to help small businesses and say to them, "If you discover a problem, you'll have 180 days to fix it with no punitive fine."

And third, because you shouldn't need a forest full of paper to protect the environment, EPA will cut its paperwork requirements on businesses and communities by 25 percent, that is 20 million hours of work for businesses and communities that will be saved for other purposes next year.

While these steps will improve the current system, others will move well beyond it to a shift in the way we actually think about regulation. EPA will launch a pilot program called Project XL, excellence and leadership, which is simple but revolutionary. They will say to the companies in the pilot and, hopefully, eventually, the companies all across the country, "Here is the pollution reduction goal. If you can figure out how to meet it, you can throw out the EPA rulebook. You figure out how to meet the goal."

I want to say, especially here, how much I appreciate both the environmental groups and the business groups that are here. We know that pollution prevention pays. We know pollution prevention and reduction is a great source of job creation for America, as well as a guarantee for our children that this country will be worth living in.

We also ought to be smart enough to know that people who are living with the consequences of this might be able to figure out how to fix it better than folks who are writing rules about it. So we're going to see if we can figure out how to do it in this way.

The other set of major reforms we're talking about involve the realms of drugs and medical devices. When I was running for President, I don't know how many Americans I had come up to me and talk to me about this all over the country but especially in places where a lot of this kind of work is done. There was a time when consumers might find that their food was adulterated, their drugs were quackery or had dreadful side effects.

Today, Americans don't have to worry about the safety or effectiveness when they buy anything from cough syrups to the latest

antibiotics or pacemakers. The Food and Drug Administration has made American Drugs and medical devices the envy of the world and in demand all over the world. And we should never forget that, either. And we are going to stick with the standards we have, the highest in the world. But strong standards need not mean business as usual in every area.

Today we are announcing a set of reforms that will make our high-quality drugs and medical devices available to consumers more quickly and more cheaply. First, FDA will stop using a full-blown review every time a biotech drug company makes a minor and risk-free manufacturing change in an established drug.

Second, FDA will stop requiring costly assessments on drugs that obviously have no significant impact on the environment.

Third, FDA will eliminate 600 pages of cumbersome regulations controlling the production of antibiotics and other drugs. And I'll give you \$100 if anybody comes up to you and complains within the next 12 months—[laughter]—when you do that. And finally, 140 categories of medical devices that pose low risk to patients, from finger exercisers to oxygen masks, will no longer need preapproval by FDA before they are put on the market.

These FDA reforms and others we'll announce in the next few weeks, will keep quality at world-class levels and save industry and consumers nearly half a billion dollars a year. And I am pleased, again, to say that there are representatives from the drug and medical device industry here, as well. We appreciate your support.

I am very, very excited about this. These changes, taken together, represent real and fundamental reform. Now, they lack the sledge hammer subtlety of a moratorium, but if we're going to be responsible, we ought to fix the problem, not just seek to freeze the problem. To go from yesterday's Government to tomorrow's Government we need movement, not paralysis. We need to continue our commitment to a Government that works better, costs less, reflects our values, and can make a difference and that doesn't drive us up the wall but drives us into the future together. That is common sense, and we can give it to the American people together.

Thank you very much.

NOTE: The President spoke at 10:47 a.m. at Custom Print. In his remarks, he referred to Stu McMichael, owner of Custom Print.

# Presidential Documents

Title 3—

The President

Memorandum of April 21, 1995

## Regulatory Reform—Waiver of Penalties and Reduction of Reports

Memorandum for  
 The Secretary of State  
 The Secretary of the Treasury  
 The Secretary of Defense  
 The Attorney General  
 The Secretary of the Interior  
 The Secretary of Agriculture  
 The Secretary of Commerce  
 The Secretary of Labor  
 The Secretary of Health and Human Services  
 The Secretary of Housing and Urban Development  
 The Secretary of Transportation  
 The Secretary of Energy  
 The Secretary of Education  
 The Secretary of Veterans Affairs  
 The Administrator, Environmental Protection Agency  
 The Administrator, Small Business Administration  
 The Secretary of the Army  
 The Secretary of the Navy  
 The Secretary of the Air Force  
 The Director, Federal Emergency Management Agency  
 The Administrator, National Aeronautics and Space Administration  
 The Director, National Science Foundation  
 The Acting Archivist of the United States  
 The Administrator of General Services  
 The Chair, Railroad Retirement Board  
 The Chairperson, Architectural and Transportation Barriers Compliance Board  
 The Executive Director, Pension Benefit Guaranty Corporation

On March 16, I announced that the Administration would implement new policies to give compliance officials more flexibility in dealing with small business and to cut back on paperwork. These Governmentwide policies, as well as the specific agency actions I announced, are part of this Administration's continuing commitment to sensible regulatory reform. With your help and cooperation, we hope to move the Government toward a more flexible, effective, and user friendly approach to regulation.

**A. Actions:** This memorandum directs the designated department and agency heads to implement the policies set forth below.

1. **Authority to Waive Penalties.** (a) To the extent permitted by law, each agency shall use its discretion to modify the penalties for small businesses in the following situations. Agencies shall exercise their enforcement discretion to waive the imposition of all or a portion of a penalty when the violation is corrected within a time period appropriate to the violation in question. For those violations that may take longer to correct than the period set by the agency, the agency shall use its enforcement discretion to waive up to 100 percent of the financial penalties if the amounts waived

are used to bring the entity into compliance. The provisions in paragraph 1(a) of this memorandum shall apply only where there has been a good faith effort to comply with applicable regulations and the violation does not involve criminal wrongdoing or significant threat to health, safety, or the environment.

(b) Each agency shall, by June 15, 1995, submit a plan to the Director of the Office of Management and Budget ("Director") describing the actions it will take to implement the policies in paragraph 1(a) of this memorandum. The plan shall provide that the agency will implement the policies described in paragraph 1(a) of this memorandum on or before July 14, 1995. Plans should include information on how notification will be given to frontline workers and small businesses.

2. *Cutting Frequency of Reports.* (a) Each agency shall reduce by one-half the frequency of the regularly scheduled reports that the public is required, by rule or by policy, to provide to the Government (from quarterly to semiannually, from semiannually to annually, etc.), unless the department or agency head determines that such action is not legally permissible; would not adequately protect health, safety, or the environment; would be inconsistent with achieving regulatory flexibility or reducing regulatory burdens; or would impede the effective administration of the agency's program. The duty to make such determinations shall be nondelegable.

(b) Each agency shall, by June 15, 1995, submit a plan to the Director describing the actions it will take to implement the policies in paragraph 2(a), including a copy of any determination that certain reports are excluded.

B. *Application and Scope:* 1. The Director may issue further guidance as necessary to carry out the purposes of this memorandum.

2. This memorandum does not apply to matters related to law enforcement, national security, or foreign affairs, the importation or exportation of prohibited or restricted items, Government taxes, duties, fees, revenues, or receipts; nor does it apply to agencies (or components thereof) whose principal purpose is the collection, analysis, and dissemination of statistical information.

3. This memorandum is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees.

4. The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the *Federal Register*.

*William Clinton*

THE WHITE HOUSE,  
Washington, April 21, 1995



## Remarks to the White House Conference on Small Business

June 12, 1995

*The President.* Thank you very much. Someone once told me that half of making a small business work was just consistent, un-failing enthusiasm. I think you have demonstrated that today. [Laughter] And I hope you never lose it.

Let me thank, first of all, my good friend Alan Patricof for the wonderful job that he has done in putting this whole conference together. I want to thank the other commissioners for the work they have done, the corporate sponsors, all the people, the staff people, who worked on our meetings out in the State and the regional meetings and made sure that we got the reports back here. I thank them all. I thank Phil Lader for the fine job that he has done.

And I want to say a few more words in a moment about the Vice President and the reinventing Government group. But let me tell you, their—we tried to do something that's hard to do, and may never register, but I noticed for years every President would come here and just continue to run against the Government. And it was always good politics, except the Government never changed because most people who worked here say Presidents come and go, but we'll be here when they're gone. [Laughter] And we decided that most of those people were pretty good people and that they didn't wake up every day wanting to make your life miserable and wanting to do things that were counterproductive and hurt the American economy.

And the Vice President and people with whom he has worked, Elaine Kamarck, Bob Stone, Sally Katzen, so many others, they actually decided to see if they couldn't get these folks involved in working with us to try to change the culture of Washington so that when we're gone, they'll be different. And that's never been done before in my lifetime. And I want to thank him and all of them for doing it. It's hard work. It's thankless work. It's hour after hour after hour of arguing and gaining ground inch by inch that no one will ever see. But I'm telling you, that is what we were hired to do. And that is what he has led the way in doing. And the country owes him a great debt of gratitude.

You know, there have only been three of these conferences held since our Nation was founded. This will be the last one in the 20th century. I also want to thank the Members of the Congress who made this possible, people in both parties who supported it. And I want to say a special word of thanks to all of you. Everybody here had to take precious time away from your business, and some of you had to close your businesses down and come here at great personal financial sac-

rifice to yourselves, and I want this to be worth your while. And I'm grateful to you for doing it, and I thank you.

You know, sometimes I think things are pretty rough around here, and I often think they're entirely too partisan. We—the Speaker of the House and I tried to change a little of that yesterday up in New Hampshire, and I think we did the right thing.

Just in case you think this is something new, let me tell you that in 1938, President Roosevelt invited small-business people from around the country to gather over at the Commerce Department. Just after the morning session started, the participants became so argumentative that the Commerce Department guards had to be called in. [Laughter] An inventor from Philadelphia became so rowdy that the DC police had to take him out of the room—[laughter]—and I quote from the historical record, "put him in a hammerlock, give him a finger twist, and assign three officers just to keep him quiet." [Laughter] Well, it was 42 years before they held another White House Conference on Small Business. [Laughter] I hope you all make it to the lunch break today. [Laughter]

You know, the last couple of conferences have really produced some positive efforts, from the Paperwork Reduction Act of 1980 to the Regulatory Flexibility Act in 1980. This year is no different. This conference is going to produce some substantive changes, and it already has, because of the State and regional meetings. And I want to talk to you about them today, ideas that grow out of the recommendations that you and your colleagues all across America have made.

I ran for President with a pretty simple vision: I wanted to restore the American dream and bring the American people together in a period of rapid change here at home and around the world, an economy in which jobs and capital, technology and ideas flow across borders at lightning speed, with great opportunities, but enormous challenges, an economy in which we were producing jobs and businesses at record rates but in which incomes were stagnant and insecurity was rising for people, especially in their middle-aged years when they needed to be thinking about whether they could guarantee their children a better shot than they had had.

My job as President is to do everything I can to see that our people and our businesses have the tools they need to meet the demands of the present age and seize the opportunities. We know that small business is the engine that will drive us into the 21st century. We know that big corporations get a lot of attention—[applause]—thank you—we know that the big companies get a lot of attention. And they should; they do important things for America. But you employ most of the people, create more than half of what we produce and sell, and create most of the

new jobs, and we need to respond to that.

Small business is the American dream. We look around this room, we see, and you can hear when you share each other's stories, innovation and ingenuity and daring.

I'll never forget one thing that Hillary told me years ago. We were talking about all the jobs we had when we were kids, and all the jobs we had going through college and law school and all of that. And she said that the most important job she ever had in her life she thought as a child was a job she had working in a small store in her hometown when she was in high school in the summertime, because this person just opened this new business to try to compete with the only other person doing the same thing in town. And she said for a couple of weeks nobody came in. And she realized, and I've heard her say it to me 50 times since she first said it, the extraordinary amount of personal courage it takes to start a new enterprise and risk yourselves in this environment. That is what made this country great. And we have to nourish it, support it, enhance it, not undermine it. That's why you're here.

When I came here 2½ years ago, the first thing we had to do is to try to generate a broad-based economic recovery because we were in a period of the slowest job growth since the Great Depression. And we were having serious problems. We had quadrupled our country's debt and tripled the annual deficit in only 12 years, while reducing our investment in the future in many important areas. We knew we had to get our fiscal house in order, bring that deficit down, and at the same time continue to invest in the skills of our people and the technologies of the future, to open markets, to create more jobs, and also, and quite importantly, to reinvent the way this Government works to make it relevant to the future toward which we're heading, not tied to the past which we have long since left.

Now this hard work is paying off. There's a lot of work still to do, but the facts speak for themselves: The economy is up; inflation is low; trade is expanding; interest rates and unemployment are down. The strategy is working. Over 6½ million new jobs have come into this economy in the last 2 years, almost all of them in the private sector, a far higher percentage of new jobs in the private sector as opposed to Government than in the previous decade. We have more than 80 new trade agreements covering everything from cellular telephones to rice from my home State and everything you can imagine in between. The deficit is being cut already by a trillion dollars over 7 years, and we are going to cut it more.

We are reducing—the deficit is now going down 3 years in a row under the budgets already passed for the first time since Mr. Truman was the President of the United States. And under the budgets already passed, thanks to the reinventing Govern-

ment effort, we are going to reduce the size of the Federal Government by 270,000. It will make it the smallest it's been since President Kennedy was the President of the United States.

In 1993, more new businesses sprung up than in any previous year since World War II when we started keeping these statistics. And 1994 broke the record of 1993. And more and more, importantly, are staying alive. In the last 2 years, business failures and bankruptcies have plummeted. We wanted to keep it that way. We're doing everything we can to accelerate that trend.

In the 1993 economic program which was passed by the Congress, there was a 50-percent cut in capital gains for 5-year investments in new businesses capitalized at \$50 million a year or less. I think that will increase access to capital for small businesses. We raised the amount that can be deducted for equipment expenses by 75 percent. We extended the research and experimentation tax credit. We have just extended the deduction for self-employed people for their health insurance premiums, and next year it will go up to 30 percent from 25 percent. We've also scrapped export controls and expanded export assistance to help not only big businesses but small businesses sell their products around the world.

When I came to this office, I had three basic goals for small business: I wanted to give new life to the Small Business Administration; I wanted to make it easier for you to get credit; and I wanted to cut Government, regulations that didn't make any sense so you could grow faster. We've come a long way toward meeting these three objectives.

Under the extraordinary leadership of both Erskine Bowles and Phil Lader, two people who became heads of the SBA not because they happened to be involved in politics but because they knew something about small business, which seems to me that should be the basic criteria for anybody who ever gets that job in the future under any administration.

We have a leaner, more invigorated, more committed SBA than ever before. We've shrunk the applications for most common loans from over an inch thick to a page long, one single page. The SBA budget is now less than the taxes paid every year by three companies that received critical SBA help early in their careers—Intel, Apple, and Federal Express.

In the past year more private capital was invested in SBA's venture capital program than in the previous 10 years combined. We have dramatically reduced the credit crunch in many parts of the country by revising banking regulations to encourage lending to smaller firms. And the SBA loans grew from 32,000 in 1992 to an estimated 67,000 this year. And though we more than doubled the number of loans, the cost to the taxpayers was reduced. We've expanded loans to



women- and minority-owned businesses dramatically—dramatically—without—this is the important criteria—we have done it dramatically without lowering the volume of loans to other business or without lowering the credit standards one single bit.

The Vice President talked a little bit about the Herculean work that he and the others in our reinventing Government group have been doing to reduce regulations. Last Friday we announced an initiative that will allow you to report wage and tax information to one place. Instead of sending the same data to many different Federal and State organizations, you can now send it to one place, and we'll do the rest. Next year, in 32 States next year, people will be able to file their State and Federal income taxes together, electronically. Now, that will really save a lot of paperwork and problems.

Today I want to make two further announcements. First of all, we're committed to making the regulatory burden lighter, literally lighter, specifically 39 pounds lighter. [Laughter] As part of the review I ordered at the beginning of the year, we are taking 16,000 pages from the Government's Code of Federal Regulations. I thought you would like to see those pages.

Could you bring them out, please?

These are our others.

**Audience members.** IRS, IRS—

**The President.** Hey, I'm working on that.

Now, if you place these end to end, they would stretch for 5 miles: 50 percent of the SBA regulations; 40 percent of the regulations of the Education Department—I want to compliment them; they're also trying to fulfill my mandate to have national standards of excellence and then support for grassroots education reform, not education reform right out of Washington—40 percent of the regulations; 25 percent of the reporting burden of the EPA. Now, let me give you an example of what this is.

**Audience member.** IRS, IRS—

**The President.** Do you want to give this talk? [Laughter] We're working on that. I already told you we dramatically cut the reporting requirements. We're working on the regs, too, on the IRS. If you knew how hard we had to work on all these, you'd come on up here and help us some more. [Laughter] That's why you're here. Give us a list of the other things you want cut. That's why you're here.

**Audience member.** IRS.

**The President.** If you give a list, you file your report—you know how this works. You've got to get your votes up and make your recommendations. But this will make a difference. This will make a difference.

Let me just give you one example of the kind of thing—if I were a betting person, and I could afford it—[laughter]—I would wage a considerable amount of money that no one will ever write me a letter complain-

ing about the demise of these regulations. But I was being reasonably conscientious, like I am, I wanted to make sure we weren't getting rid of something terribly essential, and so I asked the reinventing Government folks to give me an example of the kind of things we're getting rid of that I could relate to from my Arkansas roots. And I hate to tell you this, folks, but we're about to lose the regulation that tells us how to test grits. [Laughter] Now—it's terrible.

Now, listen to this. I want you to ask yourself if you can do without this: "Grits, corn grits, hominy grits, is the food prepared by so grinding and sifting clean, white corn, with removal of corn bran and germ that on a moisture-free basis, its crude fiber content is not more than 1.2 percent, and its fat content is not more than 2.25 percent." Here's the interesting part—[laughter]—"When tested by the method prescribed in Paragraph B-2 of this section, not less than 95 percent passes through a #10 sieve—[laughter]—but not more than 20 percent through a #25 sieve." [Laughter] Now, here's B-2; it tells you how to get that done: "Attach bottom pan to #25 sieve." [Laughter] "Fit the #10 sieve into the #25 sieve, pour 100 grams of sample into the #10 sieve, attach cover and hold assembly in a slightly inclined position. Shake the sieves—[laughter]—"by striking the sides against one hand with an upward stroke, at the rate of about 150 times a minute." If you've never been in a marching band, how do you know what 150 times a minute is? [Laughter] "Turn the sieves about 1/6 of a revolution each time in the same direction after each 25 strokes." [Laughter] "The percent of the sample passing through a #10 sieve shall be determined by subtracting from 100 percent the percent remaining in the #10 sieve." [Laughter] "The percent of material in the pan shall be considered as a percent passing through a #25 sieve."

I don't know if we can do without that or not. What they ought to do is just have a designated taster like me in every State that knows what grits taste like. [Laughter]

Now, I have to tell you, there is some real sacrifice in this, though. We've all had a good laugh, but there's some real sacrifice. I personally am having to give up this 2,700-word regulation on french fries. [Laughter] Don't worry about it, folks. Our health insurance plan has counseling for this sort of thing. I'll be all right. [Laughter]

Let me tell you that we've had a good laugh here today, but—and while a lot of this seems self-evident, it's not always easy to get rid of these things that are outdated and don't make any sense to us. But it's even harder to make regulations that need to be on the books but have become tangled up and senseless over the years, untangled, sensible, and workable.

So we're also working to make another

31,000 pages of these Federal Government regulations simpler, clearer, and more relevant to your lives—things that most of you would admit ought to be done, but just don't make sense in the way they're being done—to bring common sense back into the way we do business.

Here is proof of the example. Today I want to announce a plan to reform the laws and regulations governing pension plans in our country. And almost every one of them came from you. That's why I am urging—that's why I said to the gentleman who mentioned the IRS and the others, this is what this conference is for. When you hear this, you may want to clap, but remember, it's happening because of you. And we can do more because of you.

But let me just go over this. You may recognize these ideas because we got them from you. The pension laws enacted over the last 20 years with the best of intentions are now so utterly complicated that you need a SWAT team of lawyers and accountants to help you fill out the forms and comply with the rules. Running pension plans takes so much time and costs so much money that only 15 percent of the small businesses in our country have them. Most of you just give up, and who could blame you?

Simple streamlined pension plans, however, are good for everyone, for small business because they boost morale and give people a stake in the company, for workers because they encourage savings, and we need to do everything we can to see that our people put away more money for the future.

So here's what we're going to propose: Start a simplified IRA-based pension plan for companies with 100 or fewer employees. Under this plan, if you guarantee your employees a certain contribution, you will be exempt from complex anti-discrimination rules.

Second—I don't know how many times I've heard this myself—second, fair treatment for families who work together. Get rid of the family aggregation rule. Get rid of the family aggregation rule, which treats family members as a single entity, dishonors the hard work of individuals, and is a drag on that great American institution, the family business.

Third, simplify. There is currently a seven-part test to determine whether or not someone is a, quote, "highly compensated employee." That is nuts. [Laughter] So, we believe that there ought not to be a seven-part test. We simply ought to have a simple guideline that will save all of us time and money.

Now, we can do all of these things without opening the system to abuses. Safeguards for fair play are still in place. But we can do it, and we should. There is a lot more to do.

I want to make two points in closing. Number one, you can make progress on these

problems. It's hard work. It's more difficult than giving speeches about how bad it all is, but it can be done.

The second point I want to make is, we know you made a sacrifice in time and money to come here. We know people like you made those sacrifices to come to the regional conferences and the State conferences. This is serious business. We did not ask you to do it just so we could cheer and have a good time, although that's important. We want your further ideas. We are doing these things because people like you all over America said they ought to be done.

Lastly, let me say that for all of the challenges and difficulties in this country, I wouldn't swap with any other country in the world as I look to the future and what it holds.

So, in a few moments, the Vice President and I are going back to the White House and we're going to welcome that fine young Air Force Captain Scott O'Grady and his family there. And I want you to think about everything this country's got going for it.

First of all, and most important, it's got you and people like you, great entrepreneurs, great citizens, people who work hard, make the most of their lives, doing the best that they can with their families, contributing to their communities.

Secondly, we have more diversity in this country, more ethnic and cultural diversity, than any other advanced country. And that's a huge asset in a global economy. It's a huge asset.

Thirdly, we have a phenomenal set of assets and technology and research capability. And we have a Government that can change and can be a partner as we build the economy of the 21st century. We have profound challenges. But what I want you to believe from this experience today is that we can change, we can make it better, and that it comes from you. We will listen. That's why we wanted you to be here. I want you to be screaming and yelling and having a good time. I will not send the DC police after you—[laughter]—as long as you will send me some more good recommendations so we can do this again next year.

Thank you. And God bless you all.

NOTE: The President spoke at 10:40 a.m. at the Washington Hilton.

## The President's Radio Address

July 15, 1995

Good morning. My job here is to make America work well for all of you who work hard. I ran for President to restore the American dream of opportunity for all, the American value of responsibility from all, and to bring the American people together as a community, not to permit us to continue to be divided and weakened. To do this we need a Government that empowers our people to make the most of their own lives but is smaller and less bureaucratic and less burdensome than it has been.

So we've got to cut regulations that impose unnecessary redtape or they just plain don't make sense. And we have to change the way regulators regulate, if that is abusive or it doesn't make sense. But as we cut, we have to remember that we have a responsibility to protect our citizens from things that threaten their safety and their health. Those are goals we all support, and we can accomplish them in a reasonable, responsible, bipartisan way.

Our administration is taking the lead. We've already reduced Government positions by 150,000, cut hundreds of Government programs, eliminated 16,000 pages of regulations. We've cut the Small Business Administration regulations by 50 percent, the Department of Education regulations by 40 percent, the time it takes to fill out the EPA regulations by 25 percent. We're changing

the way we enforce the regulations. We want less hassle. We want more compliance and less citations and fines. In other words, we've got to get out the worst problems of big Government and still keep protecting the public health and safety.

Right now, Republicans in the Congress are pushing a very different approach to regulation. I believe it poses a real danger to the health and safety of our families. They call it regulatory reform, but I don't think it's reform at all. It will force Government agencies to jump through all kinds of hoops, waste time, risk lives whenever the agency acts to protect people's health and safety. It will slow down, tangle up, and seriously hinder our ability to look out for the welfare of American families.

It will create just the kind of bureaucratic burdens that Republicans for years have said they hate. It will be more time for rule-making, more opportunities for special interests to stop the public interest, and many, many more lawsuits. I want a Government that's leaner and faster, that has a real partnership between the private sector and the Government. They want more bureaucracy, slower rulemaking, and a worsening of the adversarial relationship between Government and business, that shifts the burden and the balance of power.

If the Republican Congress' bill had become law years ago—listen to this—it would have taken longer than it did to get airbags in cars; schoolbuses might not have ever had to install those sideview mirrors that help drivers see children crossing in front. The longer we waited to do these things, the more lives it would have cost.

Now, let me tell you what the world would look like in the future under these extreme proposals. You've probably heard about the cryptosporidium bacteria that contaminated drinking water in Milwaukee. It made 400,000 people sick; it killed 100 Americans. It will be very difficult to prevent that kind of danger from finding its way into our water and to control it when it does if these rules take effect.

If the new system Congress proposes takes effect it will take much longer to impose new safety standards to prevent commuter airline crashes, like the five that happened last year.

We've proposed standards in that area, and they're being resisted. And it will be far less certain that we can use microscopes to examine meat and stop contaminated meat from being sold.

You may think that's amazing, but listen to this story. If we lived in a world like the one Congress is suggesting, there would be more tragedies like what happened to Eric Mueller. In 1993, Eric was a 13-year-old young man in California, the president of his class, the captain of his soccer team, an honor student. One day, like millions of other kids, he ordered a hamburger at a fast food restaurant. But he died a few days later because he was poisoned by an invisible bacteria, *E. coli*, that contaminated the hamburger. Dozens of others also died. And just last week, five more people in Tennessee, including an 11-year-old boy, got sick again because of *E. coli*.

How did this happen? Because the Federal Government has been inspecting meat the same old way since the turn of the century. Believe it or not, inspectors basically use the same methods to inspect meat that dogs use. They touch it and smell it to see if it's safe, instead of using microscopes and high technology.

That's crazy, and for the last 2 years we have been working hard to change that, to reform the meat inspection rules so that Americans can be confident they're protected. And believe it or not, while we're working to bring meat inspection into the 20th century, some special interests are trying to stop it, in spite of the fact that people have died from *E. coli*, and this Congress is willing to help them. We're trying to make our drinking water cleaner, but this Congress is willing to adopt a regulatory system that would let polluters delay and sometimes even control the rules that affect them.

In the last 6 months, we've seen these so-called regulatory reform bills actually being written by lobbyists for the regulated industries. The Congress even brought the lobbyists into the hearings to explain what the bills did. After all, they had to; the lobbyists had written the bills. I don't think that's right. I know it's not in the best interest of the American people, and it ought to be stopped.

No one has done more than our administration to streamline and reform a regulatory system. You'll never catch me defending a dumb regulation or an abusive Government regulator. The 16,000 pages of Federal regulations we have cut are enough to stretch 5 miles. We say to small business, if you have a problem and you fix it, you can forget the fine. I want to sign a real regulatory reform bill. And there is a good alternative sponsored by Senator Glenn and Senator Chafee. It provides a good starting point and—listen to this—it includes a 45-day waiting period in which Congress can review and reject any Government regulation that doesn't make sense. Now, isn't that a lot better than letting the interest groups actually delay these regulations forever, even though we need them for our health and safety?

I want Democrats and Republicans in Congress to show the American people that we can reform without rolling back. We can cut redtape, reduce paperwork, make life easier for business without endangering our families or our workers. We do have a responsibility to cut regulation, but we also have a responsibility to protect our families and our future. We can and must do both.

Thanks for listening.

NOTE: The address was recorded at 3:24 p.m. on July 14 in the Roosevelt Room at the White House for broadcast at 10:06 a.m. on July 15.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D C 20503

ADMINISTRATOR  
OFFICE OF  
INFORMATION AND  
REGULATORY AFFAIRS

JUL 26 1995

Honorable Jan Meyers  
Chairman, Committee on Small Business  
U.S. House of Representatives  
2361 Rayburn House Office Building  
Washington, D.C. 20515

Dear Madam Chairman:

Thank you for the opportunity last week to discuss the Clinton Administration's regulatory reform achievements. The panel format was, indeed, productive. Also I want to thank you for accommodating the constraints on my time. I also appreciate your support on this important issue and look forward to working with you to further reduce the burdens on small businesses.

As you requested, I am enclosing a copy of a summary outlining the Administration's position on S. 343, "Comprehensive Regulatory Reform Bill of 1995" (current as of Friday, July 14) that I had referenced during the hearing.

Please let me know if I can be of further help.

Sincerely,

A handwritten signature in dark ink, appearing to read "Sally Katzen". The signature is fluid and cursive, with the first name "Sally" and the last name "Katzen" clearly distinguishable.

Sally Katzen

Enclosure

cc: Honorable John J. LaFalce  
Ranking Member



## ASSESSMENT OF S. 343

July 17, 1995

Over the last few days, S. 343 has improved in some respects:

- Passage of Senator Johnston's amendment revising the bill's threshold requirement for the definition of a major rule from \$50 million to \$100 million. This will return the threshold to the level used by every President since President Ford. (A step backward occurred, however, with passage of the Nunn-Coverdell amendment, which added to the definition of major rule any rule that will have a "significant economic impact on a substantial number of small businesses." This change will significantly increase the number of major rules.)
- Passage of Senator Johnston's amendment modifying the effective date of the bill to cover rules whose notices of proposed rulemaking were issued after April 1, 1995. (This modification still leaves at risk a significant number of rulemakings where a notice of proposed rulemaking was issued after April 1, 1995 but which may nevertheless have to go back to square one because the issuing agency unknowingly failed to follow one of the many provisions in S. 343 that alter the rulemaking requirements.)
- Passage of the Johnston/Baucus/Lautenberg "superfund" amendment deleting Section 628 of the bill which would have required that major hazardous waste cleanups, including superfund projects, comply with the bill's cost-benefit and risk assessment requirements. The effect of Section 628 would have been to halt many of these critical environmental cleanup projects in the their tracks and to substantially delay many of those about to begin.
- Passage of the Dole/Levin "supermandate" amendment further clarifying that nothing in the bill's decisional criteria section (Section 624) "shall be construed to override any statutory requirement, including health, safety, and environmental requirements." (Some still question the sufficiency of the Dole/Levin language.)
- Passage of Senator Glenn's "sunshine" amendment which will help to ensure public accountability in the regulatory process by mandating that OMB and agencies



establish procedures to provide the public with access to information concerning regulatory review actions.

- Passage of Senator Feingold's amendment permitting agencies to exclude from the peer review process any expert who "has a potential financial interest in the outcome" of the review.

Despite these improvements, there continue to be several areas of significant concern:

- Unsound Regulatory Decisions -- "Least Cost" vs. "Most Cost-Effective". S. 343 would require agencies to issue unsound regulations by forcing them to choose the least costly regulation available to them, even if spending a few more dollars would yield substantially greater benefits.

Possible Approaches. The "least cost" alternative language in the bill's decisional criteria section (Section 624) could be replaced with one of the following:

- language identical to that used in the Unfunded Mandates Reform Act of 1995 which requires an agency to "select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule";
- the language currently in the Glenn-Chafee substitute which requires that an agency explain whether the rule will achieve the objectives in a "more cost-effective" manner than alternatives;
- the approach proposed by Senator Chafee which requires that an agency make a finding that "there is no other reasonable alternative that provides equal or greater [the same level of] benefits at less cost [in a more cost effective manner]."

- Enormous Drain on Agency Resources -- Petitions. S. 343 contains four provisions (Section 553(l) (interpretation of rules), Section 623 (look back), Section 628 (old Section 629, alternative method of compliance), and Section 634 (major free-standing risk assessment)) which create numerous, often highly-convoluted, petition processes that will provide special interests with opportunities to tie agencies in knots. Further exacerbating the situation, the petition provisions do not permit agencies sufficient

time to conduct the required analyses and prepare the proper responses; contain inadequate standards to judge the adequacy of petitions; and contain inadequate limitations on who may file petitions.

Possible Approaches. Deletion of the four petition provisions would be the most effective means of avoiding the potential for enormous waste of valuable agency resources. (The APA already contains a provision, Section 553(e), which allows private parties to petition agencies for issuance, amendment, or repeal of a rule.) Short of this, the four petition provisions should be scaled back to: (1) limit the number of petitions that can be filed with an agency; (2) provide agencies with sufficient time to respond to petitions; (3) limit standing to those who are actually adversely affected by a rule; and (4) eliminate arbitrary sunset provisions which could cause effective regulations to terminate without going through the notice and comment process.

- Excessive Litigation. S. 343 contains a number of provisions that would vastly increase the opportunities for lawsuits challenging various aspects of the rulemaking process. Of most concern are the provisions in Section 625 and the Regulatory Flexibility section which would, contrary to traditional principles of administrative law, allow challenges to agency actions that are not yet final. Also of significant concern are provisions allowing for judicial review of the bill's numerous petition processes. All of these provisions, taken together, will permit special interests to flood the courts with legal challenges to proposed and final rules, further burdening our already overstretched court system and delaying the implementation of countless regulations designed to protect the health and safety of our citizens.

Possible Approaches. The interlocutory review provisions contained in Section 625 and the Regulatory Flexibility section should be deleted, and the provisions permitting judicial review of the various petitions should be scaled back along with the entire petition process.

- A Backdoor Regulatory Moratorium -- Effective Date. Even with the changes to the effective date provided by Senator Johnston's amendment, enactment of S. 343 as currently written could have the effect of a regulatory moratorium by requiring that regulations proposed after April 1, 1995 that have already been through notice and comment and cost-benefit analysis begin the process all over again because the rulemaking process did not comport precisely with the new requirements in the

bill. This problem will be exacerbated if the final version of this legislation requires that it take effect immediately upon enactment.

Possible Approaches. The bill's effective date language should be similar to that used in the Unfunded Mandates Reform Act: "This Act shall take effect six months after the date of enactment and shall apply only to any agency rule for which a general notice of proposed rulemaking is published on or after such date."

This assessment is based on action in the Senate at the close of business Friday, July 14, 1995. There are a number of pending amendments, however, which, if passed, would impose unnecessary costs and delays, and encourage excessive litigation, all of which the American people are trying to avoid.



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ADMINISTRATOR  
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INFORMATION AND  
REGULATORY AFFAIRS

JUN 19 1995

Honorable Jan Meyers  
Chair, Committee on Small Business  
House of Representatives  
Washington, D.C. 20515-0315

JUN 28 1995

Dear Madam Chairwoman:

Thank you for your letter of April 10, 1995, in which you request information regarding OIRA's Paperwork Reduction Act (PRA) and Executive Order No. 12866 reviews.

First, you point out that Congressman Luther had requested "a list of concrete efforts" that have been accomplished under OIRA's authorities. To respond to that request, I have enclosed two reports, entitled "The First Year of Executive Order No. 12866," and "Information Resources Management Plan of the Federal Government," dated March 1995 (Enclosures A and B).

Second, I am pleased to answer your specific questions, as follows:

Q: How many approvals and disapproval has your Office issued annually pursuant to the Paperwork Reduction Act since 1989? Please provide a separate accounting of approvals and disapprovals for independent regulatory bodies. Include how many disapprovals have been overridden by independent regulatory bodies.

A: I have enclosed a four page chart providing the number of PRA approvals and disapprovals since 1989 (and through June 8, 1995), broken down by year and individual agency (including the independent regulatory bodies) (Enclosure C). In the aggregate, there were 19,779 approvals and 278 disapprovals. During that period, on August 21, 1992, there was one "override" by the Nuclear Regulatory Commission -- for the information collections involving the "Medical Use of Byproduct Material -- 10 CFR Part 35," (OMB Control Number 3150-0171, expiring 8/31/95).

Q. Section '6. Centralized Review of Regulations, of Executive Order 12866, established in Section 6(a)(3) that agencies "shall adhere to the requirements of the Administrative Procedure Act, the Regulatory Flexibility Act, the Paperwork Reduction Act, and other applicable law..." Section 6(b) declares the "Administrator of OIRA shall provide meaningful guidance and oversight so that each agency's regulatory actions are consistent with applicable law, the President's priorities,

and the principles set forth in this Executive Order and do not conflict with the policies or actions of another agency."

In how many instances has OIRA review identified occasions to which the requirements of the Administrative Procedure Act [APA], the Regulatory Flexibility Act [Reg Flex], or the Paperwork Reduction Act [PRA] have not been followed? If feasible, please list these occasions and their results.

A. During Executive Order 12866 review, OIRA analysts look at, and consult with agency staff and officials about, many aspects of a draft rulemaking, including the APA, the Regulatory Flexibility Act, and the PRA. Often questions arise regarding: APA procedures (e.g., should a draft rule be an advance notice of proposed rulemaking or a notice of proposed rulemaking? or, is there justification for issuance of an interim final rule without proposal?); the effect of the rule on small businesses (e.g., would tiering of a standard or waiver provisions be appropriate for small entities?); or information collections related to the rulemaking (e.g., do reporting requirements minimize burden on respondents?). However, we do not keep statistics on these individual issues. Rather, as the Order emphasizes, we work with the agencies to ensure that for any significant rule submitted for OIRA review, requirements of the law are met and that costs and burdens are justified by the benefits estimated to result from the rule.

Q. How many regulations has OIRA reviewed pursuant to Section 6(b)? On how many occasions has OIRA returned a regulatory action for further consideration pursuant to Section 6(b)(3)? Please list these occasions and their results.

A. Since Executive Order No. 12866 took effect (and through June 8, 1995), OIRA has reviewed 1,600 regulations. The enclosed chart provides this data by agency, and indicates whether the regulation was cleared without change (56.0%), with change (33.5%), withdrawn by the agency (5.9%), sent improperly (1.2%), returned (0.3%), or cleared pursuant to an emergency (0.1%) or a statutory or judicial deadline (3.1%) (Enclosure D).

During the same period, OIRA returned three regulations for reconsideration. First, we returned the proposed Social Security Administration (SSA) rule entitled "What is Not Income." We explained our reasons for this return in the enclosed letter, dated November 30, 1993, to Ms. Claudia Cooley (Enclosure E). After various court decisions related to the issues raised by this rule, SSA later resubmitted the rule, arguing that the content of the rule was no longer discretionary policy. OMB cleared the rule.

Second, we returned the proposed FDA regulation entitled "Proposal to Establish Procedures for the Safe Processing, Packaging, Storage, and Distribution of Smoked Fish, Smoke-Flavored Fish, and Salted Fish." We explained our reasons for this return in the enclosed letter, dated December 29, 1993, to Secretary Shalala (Enclosure F). The Department revived this issue when developing its rule on seafood inspection under the Hazard Analysis Critical Control Points (HACCP) system, converting it into a guideline for meeting HACCP.

Third, we returned the proposed FDA regulation entitled "Nutrient Content Claims and Health Claims: Restaurant Foods." We explained our reasons for this return in the enclosed letter, dated May 15, 1995, to Mr. Kevin Thurm (Enclosure G).

Q. Has the Vice President or President been called upon to resolve a conflict between an agency and OIRA pursuant to Section 7 of the Executive Order?

A. We are gratified that the Vice President or President has not been called on to resolve a conflict under Section 7 of the Order. Instead, we have worked cooperatively with agencies to resolve differences before issues have needed to be argued before the Vice President or President. The Regulatory Working Group (RWG) created by the Order, a collegial body of White House advisors and agency policy officials, has been particularly helpful in this regard by serving as a forum for general discussion among agencies of crosscutting issues. Regarding issues involving interagency coordination, the RWG has helped agencies act cooperatively with each other, with OIRA serving as a moderator or facilitator when necessary. We are very pleased with the way this review system has served the cooperative philosophy of the Administration.

Q. On how many occasions has OIRA notified an agency that a planned regulation is a significant regulatory action pursuant to Section 6(a)(3)(A)? If feasible, please list these occasions and their results.

A. During the first six months of the Executive Order, OIRA and agencies worked together to implement this section of the Order. At this time, agencies needed to gain a detailed approach and experience as to those regulations that should be designated as "significant" and, in some cases, needed to establish centralized shops to ensure a department-wide consistency in such decisions. This process proved to take longer than we would have anticipated for a number of reasons. We described this



process in our report on the first six months of the Order, entitled "Report to the President on Executive Order No. 12866 Regulatory Planning and Review," issued on May 1, 1994 (Enclosure H). As we noted in this report, during the first six months of the Order, agencies submitted lists under section 6(a)(3)(A) designating 1,624 rules as significant or non-significant. Of these, agencies designated, and OIRA agreed, that 1,047, or 64%, were non-significant; 316, or 19%, were designated by the agency as, and OIRA agreed they were, significant; and the remaining 261, or 16%, were designated significant by OIRA.

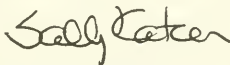
As both agencies and OMB gained experience with this process, it became, and has become, more routine. As we noted in our one-year report on the Order, "The procedures by which agencies and OIRA select rulemakings as "significant," and thus subject to OMB review, has matured -- conforming to the requirements of Section 6(a)(3)(A) of the Order, yet retaining a necessary flexibility." (Enclosure A, p. 8.) A regulation's status as "significant" is now determined by a cooperative and joint effort by OIRA and the agency, and over the past year, there has been little disagreement on this issue.

Q. On how many occasions has OIRA waived review of a planned regulatory action designated by the agency as significant pursuant to Section 6(a)(3)(A)? If feasible, please list these occasions and their results.

A. While it is possible that an agency designated a rule as significant and that OMB indicated it believed the rule was not significant, thus waiving review of the rule, we do not have any record of this happening.

I appreciate your interest, and would welcome the opportunity to discuss any of these matters with you directly.

Sincerely,



Sally Katzen

Enclosures

## THE FIRST YEAR OF EXECUTIVE ORDER NO. 12866

I. INTRODUCTION AND SUMMARY

Just over one year ago, on September 30, 1993, President Clinton issued Executive Order No. 12866, "Regulatory Planning and Review." The Order was designed to restore integrity and accountability to centralized regulatory review, qualities notably absent during the previous administration. The Order also articulated this Administration's philosophy and principles regarding regulation. These are best summarized in the Order's opening lines:

The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable.

The President directed the OIRA Administrator to report on the implementation of the Executive Order after its first six months. A written report covering the period October 1, 1993, through March 31, 1994, was delivered to the President and Vice President on May 1, 1994, as requested, and was published in the Federal Register on May 10, 1994.

In the Report, we described in some detail the progress we have made, including improved coordination both between OMB and the agencies and among agencies themselves; more timely OMB review of significant rules; more openness and early

participation by the public in rulemaking; and extensive outreach to State, local, and tribal governments and to small businesses. We also noted that the startup time had been longer than we had anticipated, and that to some extent it was simply too early to judge the success of the Order. In particular, while we had extensive information on the process, we had little information on the substantive compliance with the Order.

We now have data on the period April 1 through September 30, 1994, giving us an opportunity to evaluate the full first year of implementation. Overall, we continue to be pleased with the progress that has been made in achieving the objectives of the Executive Order, but at the same time we are acutely conscious of the work that remains to be done to realize the full benefits that we had hoped to achieve.

As will be discussed below, the processes established by the Order are now for the most part in place, and in general they are operating well. We also have more experience with, and a better feel for, the implementation of the philosophy and principles set out in the Order, particularly as they are reflected in the rules that OIRA reviews. While insufficient time and/or data have resulted in some regulations that may not be the most cost-effective means of achieving their objectives, there are many examples where agencies, by adhering to the philosophy and principles of the Order, have in fact produced "smarter" regulations. In these cases -- whether through increased outreach to the public, greater inter-agency cooperation, improved analysis, or all of the above -- agencies have been better able to balance the complex variety of factors that make up regulatory benefits and costs.

It is important to keep in mind the constraints under which the agencies are operating. The regulatory pipeline is a long one, and it is not uncommon for rules to be issued years after

the authorizing statute or the regulatory initiative first began; indeed, many of the rules promulgated by the agencies this past year were conceived and to a large extent developed before this Administration took office, and thus before the Executive Order was signed. More importantly, some of the rules that have been issued were required by statutes that contain highly prescriptive regulatory requirements, complete with time lines that drive much of the rulemaking process, particularly in the areas of health, safety, and the environment. In addition, rulemaking is often driven by other factors beyond the direct control of the Executive Branch, such as court decisions and dramatic public events that require immediate action.

Moreover, agencies today face unusual pressures to regulate. With budgetary constraints so tight, and with the difficulty of enacting new legislation in the highly partisan atmosphere that characterized the last Congress, the only means left for the agencies to implement their initiatives is through regulation. This puts inordinate pressure on any attempt to hold steady or reduce the amount of regulation in which they are engaged.

Measuring the success of the Order is complicated by other factors as well. While some of its processes can be measured with precision (for example, the number of rules reviewed by OIRA), it is not so easy to judge the success of the philosophy and principles of the Order in producing "smarter" regulations. It is tempting to argue that if all the affected stakeholders are equally irritated, then the correct balance has been struck. Whatever the truth in this, it is a uniquely gloomy definition of success to which we do not subscribe. We believe it is possible for parties to be satisfied, if not jubilant, with the outcome of a rulemaking, recognizing it for what it is, or should be -- a good faith effort in an imperfect world to further the public good.

One of the reasons it is difficult to easily measure the success of the Order is that neither the philosophy nor any of the basic principles -- development of alternatives, setting regulatory priorities, obtaining the best reasonably available information, assessing benefits and costs, considering Federal, State, local, and tribal needs, coordinating with other agencies -- lends itself to facile, mechanical application. Stated another way, the principles of the Order are not a simple check list of tasks. Instead, they are a complex and interactive body of standards that require reasoned judgment, difficult decisions, and balances of competing priorities.

Moreover, though the principles appear simple and straightforward, they are not always easy to apply in particular situations, and the agencies are often faced with imperfect information and limited personnel and financial resources to devote to analysis. And they ultimately face what must be acknowledged as a daunting task: In a society composed of complex and changing webs of institutional and individual behavior, they must predict the future, attempting to control behavior harmful to the common good, without impeding or unwittingly restraining acceptable and beneficial activities.

Finally, under the Executive Order, OIRA reviews only "significant" rules, less than half the rules formerly reviewed by OIRA and an even smaller percentage of the rulemaking documents that are published in the Federal Register. Accordingly, we neither track nor evaluate the extent to which the more routine but numerous regulations that are being issued by the agencies meet the principles of the Order.

For all of these reasons, we cannot assert that the philosophy and principles espoused in the Order either have or have not always been met by the agencies in their regulatory programs. We can, however, provide information that clearly



indicates that agencies are applying the principles in many and diverse rulemakings. We urge those who wish to rush to judgement to remember that even modest changes take enormous effort and much time to accomplish. Based on our experiences this past year that are described below, we believe that the Executive Order sets in place the means to make those changes, and that we are moving in the right direction.

The May 1st Report on Executive Order No. 12866 contained both a short history of regulatory programs of the U.S. Government and a detailed description of the Order and its objectives. These will not be repeated here. Instead, we update the data about the various processes established in the Order, followed by descriptions of some of the substantive changes we are seeing.



## II. IMPLEMENTATION OF THE PROCESSES SET FORTH IN THE ORDER

### Regulatory Planning

In the May 1st Report, we noted that the regulatory planning process set forth in Section 4 of the Executive Order had just begun. On April 5, 1994, the Vice President convened the Agencies' Policy Meeting. Guidance to the agencies was issued by the OIRA Administrator at this meeting, with additional guidance provided on May 12, 1994.

Draft Regulatory Plans were due to OIRA on June 1st. We asked for Regulatory Plan submissions from over 30 agencies -- all Cabinet agencies except the Department of State; major non-Cabinet agencies, including the Environmental Protection Agency (EPA); and several independent agencies. Some of the agencies, including the Departments of Defense (DOD) and Housing and Urban Development (HUD), as well as the Consumer Product Safety Commission (CPSC), Equal Employment Opportunity Commission (EEOC), the National Archives and Records Administration (NARA), and the Nuclear Regulatory Commission (NRC), submitted Plans on June 1st. Most of the Plans were submitted within the first two weeks of June. However, it took longer than expected to receive Plans from all the major regulatory agencies; in fact, several were not submitted until the end of June and the last was not submitted until late July.

As required by the Order (Section 4(c)(3)), the draft Regulatory Plans were circulated by OIRA to other affected agencies, the regulatory Advisors, and the Vice President within 10 days of receipt. Agencies were reminded to comment to the OIRA Administrator on any planned regulatory action of another agency that might conflict with its own policies (Section 4(c)(5)). Very few substantive comments were received by OIRA.

OIRA and OVP staff reviewed the Plans for conformance to Section 4. In general, the draft Plans, though a good start, were uneven. Several were serious, thoughtful efforts; several others were perfunctory. The better efforts were those of the Departments of Commerce (DOC), Labor (DOL), and Transportation (DOT), and EPA. In several of these cases, agency overviews were well-written descriptions of departmental objectives and their relationship to Presidential priorities.

After consultations with the Vice President's Office (Section 4(c)(6)), many agencies reviewed their draft Plans and improved them. These were submitted to OIRA during late August and September. At present the task of preparing the Regulatory Plans for publication in the Federal Register with the Unified Regulatory Agenda (as required by Section 4)(c)(7)) is proceeding on schedule. The Plans and Agenda are to be published on or about October 31, 1994.

The draft Regulatory Plans alerted us to areas where more than one agency was engaged in regulation, and they helped raise these issues to agencies' upper level managers. However, the Plans did not provide very many common themes, and, taken as a whole, they did not produce a consistent or coherent statement of the regulatory priorities of this Administration. While this is disappointing, it is not surprising given the different statutory mandates and missions of the agencies.

#### Cooperation and Coordination

OIRA and the Agencies: The improved relationships between OIRA and among the agencies that were noted in the May 1st Report have continued, grown, and generally become the norm. There remain differences of view, which can be quite sharp. But for the most part, the differences are healthy, leading to better rules, rather than sources of friction that are unproductive and detract from joint efforts.

Staffs of both OIRA and the regulatory agencies are now quite familiar with what at the turn of the year was a new and untried review process. The procedures by which agencies and OIRA select rulemakings as "significant," and thus subject to OMB review, has matured -- conforming to the requirements of Section 6(a)(3)(a) of the Order, yet retaining a necessary flexibility. While a monthly or bi-monthly list remains a common norm, many variations have developed. Moreover, agencies and OIRA staff have worked out an arrangement to designate informally, often over the phone, non-significant rules that must be published quickly. Even the most orderly regulatory planning and tracking systems must be able to accommodate unexpected events.

Some of the agencies have developed the practice of consulting OIRA staff on whether particular rules are significant even before putting them on a monthly list. Some agencies voluntarily submit advanced drafts so that OIRA staff can make a more informed judgement regarding significance. Also, in some cases, agencies exempted from the centralized review requirements of the Order have voluntarily submitted rules for review. For example, the Advisory Council on Historic Preservation (ACHP), which is formally exempted from the Order, submitted a draft proposal for review, knowing that it needed further interagency coordination. Thus, though the Order formally requires agencies to provide OIRA with a list "indicating those [rules] which the agency believes are significant regulatory actions" (Section 6(a)(3)(A)), and specifically states that "OIRA may review only actions identified by the agency or by OIRA as significant regulatory actions under subsection (a)(3)(A)" (Section 6(b)(1)), a flexibility built on trust and collegiality has developed with many of the agencies that permits the system to work smoothly and efficiently. This was unheard of a short time ago. We hope the pattern that is developing will ultimately spread to the agencies where historically there has been the greatest resistance to such a cooperative relationship.

Another specific manifestation of the improved relationship between OIRA and the agencies, which is a very constructive development, is the practice of early briefings by agencies on the content of significant rules. For example, early in the process of developing its rules for drug and alcohol testing for various transportation officials and workers, DOT consulted with the OIRA Administrator and staff on the major issues on which it would have to decide in the rulemaking. It then held subsequent briefings to update OIRA on the decisions being made at DOT and to continue to search for feedback. By the time the rules were submitted for OIRA review, there had been sufficient discussion of the important provisions that the review was promptly concluded.

In another instance, HUD was developing rules related to public housing policy regarding the elderly and the disabled. HUD officials provided information to OIRA and to other OMB staff even as decisions were being presented to HUD officials. This enabled the issues of concern to be addressed on a real time basis, and resulted in review being completed much more quickly than would otherwise have occurred.

As a final example, in March 1994, the Department of Education (ED) identified seven final regulations pertaining to student financial assistance programs that had to be published by a May 1, 1994, statutory deadline. OIRA worked with the Department's teams, discussing issues and reviewing early drafts as they were developed. As a result of this cooperative effort, a thorough review under the Executive Order took place, while, at the same time, the formal time period for review averaged only one day and the statutory deadline was met.

Lastly in the area of improved relationships between the agencies and OIRA, the Regulatory Training and Exchange Program has grown and developed. As mentioned in the May 1st Report, the



program, which implements a recommendation of the National Performance Review, brings agency career staff to OIRA on training details, so that they can learn how regulatory review is conducted and to work on Regulatory Working Group (RWG) matters. The objective of the program is to provide expertise to agency career staff regarding regulatory review that can be incorporated into the working practices of the agency.

OIRA has now hosted seven detailees, from the Department of Agriculture (USDA), the Department of Health and Human Services (HHS), and DOT. Two trainees are currently at OIRA. In addition, an OIRA analyst has undertaken a training detail at HHS. All of these details have been extremely successful and well received, both by the trainees and by OIRA. The agency detailees have been fully engaged in substantive regulatory review, and we understand they have gained a new appreciation for the perspective of the central reviewer. They have all been senior career officials, highly motivated and knowledgeable, and have not only fit in well at OIRA, but have offered valuable insights to OIRA staff regarding agency points of view. As the good news about the program travels, we hope that more agencies will take advantage of this excellent opportunity.

Interagency Coordination: Just as important as improved relationships between OIRA and the agencies are better working relationships among the agencies themselves and the consequent heightened awareness of the need for interagency coordination and cooperation in complex rulemaking endeavors. The Executive Branch is an extensive enterprise, and its programs are dispersed among hundreds of different agencies, subagencies, and offices. We obviously cannot claim that there are no glitches, but we believe agencies are making strong efforts to engage in much more extensive interagency coordination.

For example, in the ACHP example noted above, the agency met at length with the Department of Interior (DOI), DOT, USDA, HUD, and EPA in developing its proposed rule. Not all these agencies were satisfied with the proposal that was eventually drafted, but all agreed that they had been fully consulted. This process is not over, and will continue during and subsequent to the public comment period, as ACHP develops its final rule.

In another instance, DOC, DOI, and the Council of Economic Advisors (CEA) worked closely together on DOC and DOI rulemakings that seek, through a survey methodology called "contingent valuation," to quantify the non-use value of damages to natural resources. After substantial consultation among the primary participants, as well as with EPA and the Department of Energy (DOE), DOI and DOC issued coordinated proposed rules whose comment periods only recently closed. It is expected that there will be even more extensive interagency coordination before the final rules are issued.

It is worth noting that interagency coordination is often quite time- and resource-consuming and not without its frustrations. Agencies do after all have different perspectives on their overlapping jurisdictions and mandates, and the process of working out an accommodation is not necessarily a trivial task. In such instances, however, OIRA can often serve as a facilitator of debate, leading to resolution of issues.

For example, a USDA final rule on farmland protection was drafted to implement a statutory requirement that Federal agencies measure the adverse effects of their programs on the conversion of farmland to nonagricultural uses. During its review at OIRA, the draft rule was the subject of extensive coordination among USDA, DOT, HUD, the Department of Justice (DOJ), and Treasury. Although the 90-day review period had to be extended, eventually the agencies reached understandings and



resolved their disagreements. All agreed that the result was a rule that met the intent of the statute without unduly burdening or restricting other Federal programs.

Similarly, coordination among agencies was essential to the issuance of EPA's rule on General Conformity. The Clean Air Act Amendments of 1990 (CAA) require that Federal agencies insure that any actions they undertake or support are consistent with State air quality planning under the Clean Air Act -- *i.e.*, Federal actions must be shown to be in "conformity" with State implementation plans and must not cause or contribute to air quality problems.

Through its rulemaking, EPA sought to delineate the steps Federal agencies were to take and when they were to take them. EPA had initially chosen to interpret the statutory language to require the complex conformity determinations and mitigation/offsetting measures for a vast range of Federal actions -- even those where the Federal agency might exert no continuing control, such as the sale of DOD property or the granting of a Corps of Engineers wetlands modification permit. Because other Federal agencies' activities were clearly affected by this rulemaking, there were a series of multi-lateral and bi-lateral discussions organized by OIRA. As a result of those discussions, certain definitions were refined and certain proposed procedures simplified -- again producing a rule that met the intent of the statute without unduly burdening or restricting other Federal programs.

An example involving HHS and the National Science Foundation (NSF) illustrates the importance of interagency coordination in resolving difficulties with stakeholders and developing a consistent Federal policy. In September 1989, HHS's Public Health Service (PHS) proposed guidelines to prevent financial conflicts of interest by federally funded scientists. The

proposal was severely criticized by the research community as being unreasonably harsh and burdensome, and it was soon withdrawn. NSF then began its own efforts to address this issue, publishing a proposed policy for comment. Over the past year, OIRA and the Office of Science and Technology Policy (OSTP) worked with NSF and HHS to develop a coordinated policy regarding how agencies should regulate financial holdings of scientists who receive Federal grants. After several interagency meetings and extensive discussions, NSF and HHS agreed to develop a common approach. Moreover, the rules are designed to provide maximum flexibility to universities in implementing policies on how to address potential conflicts of interest.

The success of this effort is shown in an article published in Science Magazine describing the rules as "being roundly applauded for their reasonableness." (Science, Vol 265, July 8, 1994, p. 179-80). Whereas the original proposals were considered prescriptive and would have required institutions to turn over researchers' financial disclosures to the government, the final NSF rule states general aims leaving implementation to the universities. The article quotes the associate vice chancellor for research at the University of Illinois as viewing the rule as "a positive example of the process working for both sides. Institutions made comments [on the 1989 proposal], and the agency responded in a thoughtful way."

The coordination and cooperation described above is the result of strong support by the President and Vice President and of trust and cooperation among agency regulatory policy officials. The mechanisms established by the Executive Order to stimulate and encourage such coordination are working well. The Regulatory Working Group (RWG) has continued its role of keeping high level agency regulatory policy officials in touch with each other and with the White House regulatory policy advisors.

The RWG followed up its initial meetings in November, January, and March, with meetings in April, May, June, and August. Implementation of the Executive Order was a frequent agenda item for these meetings, along with discussions of the Regulatory Plans, centralized review and the process by which rules are determined to be significant, public involvement and outreach in rulemaking, and the Section 5 review of existing regulations. Important legislative issues related to regulatory affairs were also discussed, including unfunded mandates, risk analysis, regulatory flexibility analysis, and takings. In addition, the RWG heard periodic reports by the four subgroups on cost-benefit analysis, risk analysis, streamlining, and the use of information technology in rulemaking. Finally, small business issues and issues related to the Paperwork Reduction Act were often subjects of discussion among the RWG members.

The Federal Partnership - Intergovernmental Cooperation:

Executive Order No. 12866 places particular emphasis on improving the Federal Government's relationship with State, local, and tribal governments. (See Sections 1(b)(9), Section 4(e), Section 6(a)(1), and Section 6(a)(3)(B)(ii).) Executive Order No. 12875, "Enhancing the Intergovernmental Partnership," further addresses this issue, focusing on reduction of nonstatutory unfunded mandates largely through a process of formal consultation and coordination.

OIRA has continued its outreach to State, local, and tribal governments (Section 4(e)). In the May 1st Report, we noted that OIRA had held two conferences with representatives of these entities. We sponsored a third forum in July, at which representatives from the National Governors' Association, the League of Cities, the Conference of State Legislatures, the National Association of Counties, and the Advisory Commission on Intergovernmental Relations spoke about their regulatory concerns.

While we have no standard of measurement to gauge improvements, our sense is that agencies are generally taking seriously their obligations to work together with other governmental entities. For example, HHS Secretary Shalala writes to the governors on occasion summarizing major Departmental initiatives of interest to the States. This is part of an HHS effort to "strengthen the federal-state partnership that is crucial to the successful operation of so many of our Department's programs." It is our understanding that this effort to inform the States has been much appreciated.

Another example from HHS involves PHS. Over the next year, the agency has committed to extensive consultation with the States in developing guidelines for state mental health services planning. Such guidelines will assist States in establishing useful goals and objectives for monitoring the management of, and investments in, State mental health services.

EPA recently issued a proposal that would limit toxic air emissions from municipal waste combustors, many of which are either owned or operated by local governmental entities. In preparing its proposal, EPA consulted extensively with a wide variety of stakeholders, including the Conference of Mayors, the National League of Cities, the National Association of Counties, the Municipal Waste Management Association, and the Solid Waste Association of North America. In drafting its proposal, EPA considered the concerns expressed by these groups, and discussion with them will continue following the proposal.

A recent rulemaking by the Architectural and Transportation Barriers Compliance Board (ATBCB) concerning Americans with Disabilities Act (ADA) rules is another illustration of consultation with State and local officials, as well as of interagency coordination. ATBCB's rules set standards for State and local government implementation of the ADA through technical



specifications for the design of buildings, parks, roads, and the like to make them accessible to people with disabilities. (The ATBCB standards will ultimately be implemented through rules issued by DOJ and DOT.) In the course of Executive Order review, the ATBCB: requested comment about the scope of State and local accommodations in order to develop a better cost estimate to accompany the final rule; summarized prior consultations with States and localities, consistent with the provisions of Executive Order No. 12875; and, after meeting with DOJ, DOT, and OMB, developed a list of State and local organizations to receive copies of the rulemaking documents for comment.

ED also engaged in an extensive process of consultation with State and local entities during development of a regulatory proposal that would have required States to provide supplementary services, in excess of Federal funds for these services, to certain disadvantaged students receiving vocational education. ED held two public meetings with State and local education officials and student representatives, solicited written public comment on the issue, and worked with States to obtain additional information on the costs that the rule would impose on them. Unfortunately, this process did not result in agreement on certain issues, leading Congress to intervene to prevent the Notice of Proposed Rulemaking (NPRM) from being published. This highlights the fact that while consultation is essential to effective rulemaking, it may not be sufficient -- for all the consultation may not change the different participants' perspectives and does not necessarily ensure agreement.

It is also worth noting that some agencies are not only consulting with States, but actively seeking to enhance State flexibility and eliminate unnecessarily burdensome regulatory barriers. For example, HHS's Health Care Financing Agency (HCFA) is developing a Medicaid final rule which will simplify the process of obtaining Medicaid home and community-based services



waivers, thereby enabling States to offer a wide variety of cost-effective alternatives to institutional care. The rule will simplify the cost effectiveness test by eliminating the "bed capacity test," which had become burdensome and unproductive to maintain; it will also give States increased flexibility to assess their programs. Also in HHS, the Administration for Children and Families modified its Adoption and Foster Care Analysis and Reporting System to reduce burdens on States. Rather than require the submission of all reporting data, the agency allowed States to submit a sample of the data associated with the management and reporting of foster care and adoption cases.

Two final examples illustrate efforts by agencies to include tribal governments as partners. HUD consulted with tribal representatives in developing amendments to the Indian Housing Consolidated Program to simplify program processes, reduce the number of regulatory requirements, and provide more flexibility to local tribal and Indian housing authority officials. HUD held a session with the National American Indian Housing Council, regional Indian Housing Authority (IHA) associations, and tribal leaders. While HUD was fashioning the proposed rule, comments were solicited from the Native American housing community, and after publication of the proposed rule, the program offices continued to consult with the IHAs and tribes on the proposed changes.

The second example is the rulemaking on Indian Self-Determination, where DOI and HHS worked with tribal representatives to break a four-year logjam which had delayed publication of a proposed rule. The purpose of the rule is to implement a system whereby Indian programs currently administered by the Federal government may be contracted to, and administered by, American Indian tribes. There were extensive consultations with tribes, including three regional meetings and one national

meeting, to discuss their concerns with the proposed rule, which was published in January 1994. The Department is pursuing other ways to increase tribal participation in the development of the final rule, including forming a tribal committee under the Federal Advisory Committee Act.

#### Openness: Public Involvement

The trend toward increased public involvement in the rulemaking process has continued since the spring, and we believe it has become a common feature of rulemaking in the Clinton/Gore Administration. Although we have no statistics to measure increased public involvement, it is our sense that agencies increasingly are seeking ways to involve those affected by rulemaking, not only through formal means -- such as regulatory negotiations and longer comment periods after publication of proposed rules -- but also through more informal means earlier in the rulemaking process.

For example, HUD wanted to amend its existing regulations to simplify and expedite the Comprehensive Grant Program planning and funding process for certain housing agencies. In developing its proposal, the Department held a series of working sessions with various interest groups, housing authorities, and residents, soliciting their ideas and suggestions. HUD then published its proposed rule which incorporated many of their recommendations.

Agencies are also using electronic means to obtain early and more extensive public input. For example, last winter ED began developing a proposal to amend existing regulations governing the independent living programs. The Department sent out more than 400 letters inviting comments, along with computer diskettes that contained a draft of the proposed regulations, to State vocational rehabilitation agencies, statewide independent living councils, centers for independent living, constituent organizations, and other interested parties. The draft of the

proposed rules was also made available on the "DIMENET" AND "RSA BBS" electronic bulletin boards. A series of public meetings and teleconferences enabled a cross-section of individuals representing a wide variety of organizations and viewpoints to contribute their thoughts during the developmental process.

When the NPRM was published in the Federal Register, the Department made it available through these electronic bulletin boards, and a "CompareRite" copy of the proposal was provided that showed changes that were made as a result of the earlier public involvement. The public was also invited to submit comments on the NPRM electronically via the bulletin boards. This is an outstanding example of how outreach and technology can help the government to solicit the views of those most knowledgeable about a rulemaking. It also serves to increase the sense of partnership between the government and the public by making the rulemaking a joint enterprise rather than the imposition of commands by Federal authority.

Regulatory Negotiation: Another way this Administration has encouraged communication between the regulators and regulatory stakeholders beyond the barebones of the Administrative Procedure Act (APA) notice and comment procedures has been its encouragement of negotiated rulemaking or "reg neg."

A reg neg brings together the stakeholders in a potential regulatory situation to negotiate a proposed document that then goes through APA procedures. By involving interested parties directly in the drafting of the rule, and by having them negotiate out at least some areas of disagreement, it is expected that the rule will be more intelligently drafted and less contentious when it is proposed, and it will be more readily accepted and less likely to be litigated when it becomes final.

The Executive Order (Section 6(a)(1)) directed agencies to explore and use -- where appropriate -- regulatory negotiation as a consensual mechanism for developing rules. In addition, implementing a recommendation of the National Performance Review, the President by separate memorandum issued the same day as the Executive Order, directed each agency to identify to OIRA at least one rulemaking that it would develop through the use of reg neg during the upcoming year, or explain why the use of negotiated rulemaking would not be feasible.

The May 1st Report noted that agencies had provided reg neg candidates to OIRA by December 31, 1993, as the President had directed. Since then, many agencies have continued the substantial planning that is necessary for a successful reg neg, or have begun (or in some cases, concluded) reg negs.

DOT, which was the first agency to use reg neg over a decade ago and has much experience with this technique, has recently identified over a half-dozen possible candidates for negotiation during the next year; the Federal Railroad Administration (FRA) has already published a notice seeking public comment on its proposal to use reg neg for one of these -- a rulemaking addressing the hazards railroad workers face along rights-of-way from moving equipment. EPA is actively engaged in reg negs for disinfectant byproducts, enhanced surface water treatment, and small nonroad engines. DOI has formed a committee under the Federal Advisory Committee Act to deal with a Federal gas valuation rulemaking. OSHA has established a reg neg committee to examine its steel erection standard. And reg neg committees have also been approved for Federal Communications Commission (FCC) and Interstate Commerce Commission (ICC) projects.

Reg negs do not always work, though the experience so far with the technique is generally favorable. ED has been required by statute to use regulatory negotiation in many of its



rulemakings. One recent reg neg involving direct loans was a very prominent but not entirely successful negotiation. Although consensus was reached on a majority of the provisions in this rule, the negotiators did not agree on certain key provisions, including the mechanism by which borrowers would repay their loans. Nonetheless, a trade publication wrote that certain interests "who might otherwise have been the first to pounce on the proposed regulations said they were intimately familiar with -- and generally happy with -- the rules after spending the first half of this year negotiating with ED."

Another ED reg neg, involving guarantee agency reserves was less publicized but more successful in reaching agreement. The rule involved how to handle funds held in reserve by the agencies that "guarantee," or reinsure, student loans under the bank-based loan program. The negotiations took place two days a month from January to July 1994 and involved the Department, guarantee agency representatives, student representative, school associations, and State higher education officials. OMB observed the negotiations and concurred with the consensus NPRM that emerged, reviewing the formal submission from ED in one day. ED expects to publish the final rule by December of this year, with little or no problem in the process.

Small Business: Regulations often create a disproportionate burden on small businesses, since, for example, the same recordkeeping or reporting requirement may consume a much greater percentage of the managerial or administrative resources of a small business than of a large business. As a result, OIRA and the Small Business Administration (SBA) have taken steps to improve the participation of the small business community in the rulemaking process. We noted in our May 1st Report that OIRA and SBA sponsored a Small Business Forum in March 1994 for this purpose. This Forum brought together representatives of small business and six of the Federal agencies who most regulate them -



- the Internal Revenue Service (IRS), the Food and Drug Administration (FDA), DOT, EPA, DOL, and DOJ.

This Forum was followed by work sessions, which took place over a three-month period, that developed findings and recommendations centered around five industry sectors -- chemicals and metals; food processing; transportation and trucking; restaurants; and the environment, recycling, and waste disposal. These sessions were capped with a town-meeting-style forum held at the Chamber of Commerce in Washington and chaired by the Administrators of OIRA and SBA. An audience of about 75 small business owners, who had come to Washington to participate in SBA's Small Business Week and many of whom were winners of SBA small business awards, directed questions and comments to a panel of agency officials representing the six regulatory agencies listed above.

A second Small Business Forum was held on July 27, 1994, in which the recommendations and findings of these work groups were presented. The concerns expressed by small businesses and the recommendations drafted by agency staff to help alleviate these concerns parallel to a remarkable degree principal provisions of the Executive Order. These include:

- o the need for better coordination among Federal agencies;
- o the need for more small business involvement in the regulatory development process;
- o the inability of small business owners to comprehend overly complex regulations and those that are overlapping, inconsistent and redundant;
- o the burdens caused by cumulative, overlapping, and/or inconsistent Federal, State, and local regulatory and recordkeeping requirements;

- o the need for tangible evidence of paperwork reduction; and,
- o the perceived existence of an adversarial relationship between small business owners and federal agencies.

Officials from the participating agencies pledged to move ahead with various activities responsive to some of the recommendations and to examine ways to respond to the remaining recommendations. In addition, pilot projects with the governors' offices of New York and North Carolina were announced. These States will work with SBA and the regulatory agencies on means of improving Federal-State coordination regarding burdens on small businesses and State projects to improve their own ability to communicate better with, and involve small businesses in, State regulatory decisionmaking.

As a general matter, however, it is our experience that regulatory agencies still tend to draft one-size-fits-all rules, rather than tailoring them to particular regulated communities, including small businesses. It appears that it will take further effort before such tailoring becomes commonplace. We believe that more extensive early involvement by SBA in the rulemaking process could help move this process forward. Accordingly, we are currently developing with SBA a process to assure that SBA's Chief Counsel for Advocacy has full opportunity to review significant agency rulemakings where such tailoring would be most appropriate and to have agencies implement the Regulatory Flexibility Act more effectively and completely.

#### Integrity of OIRA Review

Prior to this Administration, the regulatory review process had been severely criticized for delay, uncertainty, favoritism, and secrecy. Restoring the integrity of centralized review was one of the primary tasks facing this Administration as it drafted Executive Order No. 12866.

Disclosure: Section 6(b)(4) of the Executive Order sets forth certain disclosure procedures "to ensure greater openness, accessibility, and accountability in the regulatory review process." OIRA's practices regarding these procedures were described in detail in our May 1st Report. It is a telling measure of the almost complete success of these procedures that there is little additional to say about them and, as far as we know, little interest in them anymore. OIRA adheres to these procedures, and they have long become routine.

We continue to make available a daily list of draft agency regulations under review. Starting in August 1994, this list was made available electronically as well on the Internet. Monthly statistics and data on rules for which review has been completed are also made public. Meetings and telephone calls with persons outside the Executive Branch on regulations under review continue to be logged, and an agency representative invited to such meetings. As of March 31st this log had 36 entries. It now contains an additional 35 entries for meetings that occurred between April 1st and September 30th. In all but 6 instances, these meetings were chaired by the OIRA Administrator; in these 6, the meetings were chaired by other OMB officials. An agency representative was invited to all meetings and attended in all but 5 instances. Materials sent to OIRA on pending regulations from anyone outside the Executive Branch are kept in a public file and a copy is forwarded to the appropriate agency. After a regulatory action that has undergone review is published, documents exchanged between OIRA and the agency during the review, including the draft rule submitted for review, are made available to anyone requesting them. As far as we know, this aspect of the Order is working as it was envisioned.

Regulatory Review Statistics: Executive Order No. 12866 changed the scope of centralized regulatory review by having OIRA review only "significant" rules. This was designed to return

responsibility for routine rulemaking to the agencies, to reduce delay, and to focus OIRA's limited resources on the most important rules. In the May 1st Report, we described in detail how this process was working. We noted that establishing the process for determining whether rules were "significant" or "not significant" had taken longer than anticipated to set up, but that after the first three months, the process of limiting the rules reviewed by OIRA seemed to be working. Based on another six months of experience, we can say that there continue to be some disagreements about whether or not a particular rule is significant, and not infrequently reaching a final decision can take longer than we would like. However, the significant problems we described in the May 1st Report that characterized the process during its first three months have for all practical purposes been resolved.

OIRA's regulatory review statistics show that in other respects as well, what was intended by the Executive Order has, in fact, taken place. Between April 1 and September 30, 1994, OIRA reviewed 388 rules (Table 1). By way of comparison, during the first six months of the Order, OIRA reviewed 755 rules (Table 2) [Note: see Tables 1 and 2 in the May 1 Report; the 755 figure includes rules submitted for review prior to Executive Order No. 12866.] Even though the first six months of the Order included review of rules received before the signing of the Executive Order and the continued submission of some non-significant rules, the total for the first year of the Order is 1143 reviews. This is half of the average reviews per year for the previous 10 years, slightly over 2,200. Between January 1 and September 30, 1994, when for the most part only significant rules were submitted to OIRA for review, OIRA reviewed 661 rules. At this rate, OIRA will review fewer than 900 rules in 1994, a 60% reduction from the annual average of the previous decade. Thus, the number of rules OIRA reviews has been reduced substantially.



The agencies with the greatest number of rules submitted for OIRA review between April 1 and September 30th were HHS 82, USDA 65, EPA 47, ED 35, HUD 34, and DOT 31. These six agencies account for 76% of the rules reviewed by OIRA. Table 1 also shows that of the 388 rules reviewed during the second six months of the Order, 66 (17%) were "economically significant," while 322 (83%) were significant for other reasons (Section 3(f)(2,3, and 4)). USDA and EPA had by far the most economically significant rules, 21 and 16, respectively.

Of the total of 388 rules, 149 or 38% were proposed rules; 179 or 46% were final rules; and the remaining 60 or 15% were notices (such as HHS, HUD, or ED funding notices, notices of selection criteria, or notices of procedures). OIRA concluded review without any changes being made on 58% of the rules reviewed; it concluded review with changes on 35%. The remaining 7% were withdrawn by the agency, were returned because they were sent improperly (5 USDA rules), or were cleared in order for an agency to meet a court or statutory deadline (8 of 9 were EPA rules). The percentage of rules cleared with changes varied widely by agency -- 18% for USDA, 26% for HHS, 26% for DOT, 47% for HUD, 60% for EPA, and 69% for ED.

The average review time for all rules reviewed was 30 days, compared to 38 days for those reviewed during the first six months of the Order. Reviews of economically significant rules were on average slightly longer (31 days) than those of other significant rules. Average review times for all rules varied by agency -- from below mean for USDA (22 days) and DOT (22 days); to about mean for HHS (29 days) and ED (30 days); to above the mean for HUD (37 days) and EPA (48 days).

In our May 1st Report, we indicated that once the review process was fully implemented and agencies submitted only significant rules to OIRA, the total number of rules reviewed was



likely to decrease. As noted above, this has certainly proven to be the case. We also predicted that the percentage of rules cleared with changes would increase. This has occurred to some degree; the average percentage of rules cleared with changes over the past decade averaged about 22% compared to 35% for the rules reviewed between April and September 1994.

We also predicted that average review time was likely to increase, particularly for economically significant rules. This has not proven to be the case. In fact, average review time is about what it has been over the past decade. More specifically, the review time for economically significant rules is only marginally greater than review time for other significant rules. There are several factors that may explain, in part, this phenomenon. We note, for example, that USDA had the greatest number of economically significant rules (21) and a very short average review time (14 days). This is because most of USDA's economically significant rules are crop price supports, regulations that essentially codify decisions already made through the appropriations process. It may also be that the average review time for economically significant rules is relatively low because agencies are consulting with OIRA earlier in the process, thereby obviating the need for lengthy reviews when the rule is formally submitted. Regarding the review time for significant rules in general, it appears that the Order's limitation of 90 days for review, as well as the OIRA Administrator's practice of having all rules under review longer than 60 days raised for her consideration, has resulted in an expedited review process.

OIRA's review is limited to 90 days except that extensions may be granted by the Director or requested by an agency head (Section 6(b)(2)(B and C)). Such extensions have been needed infrequently; for example, of the 388 rules reviewed between April and September, only 11 or 3% were extended beyond the 90-

day period. All of these extensions were made at the request of the agency.

The 90-day review period has generally proven adequate, and as has been noted, we are able to complete most reviews within that time period. However, in some instances 90 days is simply not enough to conduct an adequate review. Where interagency coordination is needed (such as USDA's Farmland Protection rule or EPA's General Conformity rule), issues may take more time to resolve, if only because of the logistics of getting all of the interested agencies together. In some other instances, we are rushed at the end of the review period, or rules must be extended beyond that period, because agencies are slow in responding to OMB questions or requests for analysis. Some of these may be the result of limited resources or otherwise beyond the control of the agency, but in some cases it may reflect a conscious decision by the agency that this rulemaking is of lesser importance than other pressing matters. We understand, and indeed sympathize, but it remains a concern for us because the agency's delay is on our clock and it is Executive Order review that is ultimately curtailed.

### III. APPLICATION OF THE PHILOSOPHY AND PRINCIPLES SET FORTH IN THE EXECUTIVE ORDER

The processes described above -- regulatory planning, interagency and intergovernmental coordination, openness and encouraged public participation, restoring integrity to centralized review -- were all designed to lead to better, more focused, more effective, less burdensome -- i.e., smarter-- regulation. The many examples cited above demonstrate that the regulatory process has been improved. The question remains, are the philosophy and principles of the Order being applied to the fullest extent? Are we really getting smarter regulation? This is difficult to answer because, as noted in the Introduction, there is no direct measure of performance that we can use. We do have anecdotes, however, suggesting that the Administration is producing smarter regulations, as we now discuss.

One of the more important features of the Executive Order is its emphasis on good data and good analysis to inform (and not just justify) decisionmaking. One example of the application of this principle is DOT's National Highway Traffic Safety Administration (NHTSA) rulemaking on side-impact protection for light trucks. In the spring of 1994, NHTSA submitted to OIRA for review a proposed rule that would extend to light trucks many of the same side-impact protection requirements now applicable to passenger cars. The proposal was accompanied by a first-rate regulatory analysis prepared by NHTSA staff. The analysis revealed that while the added requirements were cost-effective when applied to the protection of front seat passengers, they were not cost-effective for protecting rear seat passengers. For this reason, NHTSA decided to delete the language proposing to prescribe requirements affecting rear seat passengers, instead seeking comment on the issue.

Another example is HUD's rulemaking on mobile home wind requirements. In the wake of Hurricane Andrew, HUD moved to upgrade the safety of mobile homes. However, increased safety standards means increased costs. The Wall Street Journal quotes HUD's Assistant Secretary for Housing as remarking that the issue requires "the classic balancing act. We could make these homes completely safe and solid - so much so that they'd be out of reach for lower-income consumers." To inform its policy choices and to stimulate discussion among the various stakeholders, HUD's draft regulatory impact analysis set forth the tradeoffs, and the data they are based on, for public scrutiny. Both the data and the analysis have been criticized, but this rulemaking demonstrates the value of analysis, even if it is flawed, in engaging stakeholders in the debate that leads to reasonable balances, as suggested by HUD's Assistant Secretary.

Another feature of the Executive Order is its preference for focused (or tailored) requirements and for performance-based (or flexible) provisions rather than across-the-board, mechanically applied, command-and-control approaches. An example of the application of these principles is the EPA proceeding on lead abatement. Congress directed EPA to create model inspection, worker training, and cleanup regulations for lead abatement of housing, commercial buildings, and various industrial structures. EPA plans to issue these regulations in phases throughout 1994. The first phase included primarily administrative matters, -- e.g., worker training, certification, and State program administration regulations. Initially, the proposal was heavily prescriptive (e.g., detailed diagrams for soil sampling), included extensive paperwork requirements (e.g., detailed documentation of each, identical sampling effort), and did not distinguish between potentially high-risk and low-risk lead hazards. EPA and OIRA staff, working together, substantially revised the draft proposal to reduce the prescriptive character of the rule, adopt more of a performance standard approach, and

re-focus the requirements on the more important sources of health risk (e.g., spending less resources on testing and studies, leaving more for cleanup itself). This revised proposal should also provide States and local governments with greater flexibility in establishing lead abatement programs than had originally been contemplated.

Also relevant here is the EPA combined sewer overflow policy. EPA developed a policy for controlling combined sewer overflows (CSOs) -- i.e., instances when, as a result of heavy rains, sewage and other waste overflow normal channels, bypassing treatment plants. The new policy ensures that an extensive planning effort is undertaken, so that cost-effective CSO controls can be developed that meet appropriate health and environmental objectives. It establishes clear control targets, but provides sufficient flexibility to municipalities so that they can tailor programs to their specific circumstances.

The DOT alcohol and drug testing rules were mentioned above as an example of improved agency/OIRA relations. They are also illustrative of a rulemaking where the Department approached a complex issue analytically and made significant improvements to its rule, reducing burden without reducing safety, by applying the principles of the Executive Order. For example, in its final rule, DOT adopted a performance-based approach for determining the rate of random drug and alcohol testing. Thus, based on already existing performance-based data, the random drug testing rate was reduced from 50% to 25% for the airline and rail industries; for alcohol testing, the testing rate will be 25% if the industry violation rate in any year is less than 1%, and it may decrease to 10% if the industry violation rate is less than 0.5% for two consecutive years. DOT also simplified and streamlined its requirements for reporting drug testing data, introducing sampling techniques and otherwise reducing the burden



and complexity of the information collection requirements from employers.

Another example from DOT involves the Coast Guard's rulemaking involving overfill devices. The Coast Guard was required by statute to promulgate rules involving the installation of signalling (overfill) devices to alert crew about the likelihood of a unanticipated spill. In its proposal, the Coast Guard added material concerning the use of lower cost signalling devices (i.e., stick gauges) rather than more costly and sophisticated alarm devices. The final rule, which will be published soon, will allow the lower cost devices on certain vessels (i.e., tank barges) thus significantly reducing the cost of the rule from about \$90 million to about \$40 million (npv) over 15 years. The Coast Guard does not believe that the use of the less costly signalling devices on these vessels will significantly increase the risk of small unanticipated spills.

An example from DOL's Occupational Safety and Health Administration (OSHA) is that agency's rulemaking on asbestos. In preparing its final rule governing asbestos in the workplace, OSHA made substantial changes to its proposal to improve the clarity of the regulation and ensure that as much flexibility as possible was retained in process-specific standards. Thus, for example, while the proposal could be read to require extensive controls (e.g., glove bags, mini-enclosure, and respirators) for any maintenance work conducted around asbestos-containing materials, even if exposure was negligible (e.g., pulling wires above suspended ceilings), OSHA's final rule required such controls only when there is a physical disturbance of the materials. In addition, the final rule avoided inconsistencies with existing EPA standards by eliminating the use of terms to classify asbestos that differed from those used by EPA. Finally, OSHA raised in the preamble of the final rule the possibility of its adopting an action level to serve as a clear regulatory

threshold below which fewer protective measures would be needed if practical sampling devices become available.

HHS also has been attentive to the principles of the Order. For example, the Mammography Quality Standards Act of 1992 required FDA to establish Federal certification and inspection programs for mammography facilities; regulations for accrediting bodies for mammography facilities; and standards for mammography equipment, personnel, and practices. In designing these rules, FDA made the standards less burdensome on mammography facilities, which are nearly all small businesses, by incorporating existing standards to the maximum extent possible. It also provided for the issuance of Federal certificates to facilities already accredited by the American College of Radiology; required facilities to submit certification information only to an accrediting body and not to FDA; and permitted flexibility in meeting certain other standards.

As noted above, HHS has also been sensitive to minimizing the burden of Federal regulations on State, local, and tribal governments. For example, this past year, the Maternal and Child Health Bureau developed a streamlined, block grant application and annual report. The revisions resulted from an impressive consultation effort with State maternal and child health groups and the National Governor's Association. The burden imposed by the requirements has been cut in half, while the materials are easier to understand and will be more useful in local, State, and Federal planning.

HHS has also taken steps to streamline the burden on the private sector as well. In March 1994, HCFA published a rule that replaced the annual requirement for physicians to provide hospitals with a signed acknowledgement concerning penalties for misrepresenting certain information with a one-time signing requirement, fulfilled at the time a physician is initially

granted hospital admitting privileges. One major medical association characterized this change as one that will alleviate the "hassle factor" for physicians and one that is an important step toward restoring mutual trust between the Federal government and the medical profession.

Another example of burden reduction comes from DOT. The Federal Aviation Administration (FAA) realized that not all regulatory modifications are dramatic, but incremental efforts to reduce burden and unnecessary provisions can add up to significant improvements. Recently, in a broader rule that made other changes to the medical certification standards, FAA responded to an American Medical Association report suggesting that the burdens of the medical certification process for pilots could be significantly reduced by extending the two-year certification to a three-year duration for younger pilots. This simple change will cut the overall paperwork associated with the certification process by about 15% in total, and over 30% for those pilots under age 40.

In the same vein is a recent SBA action that eliminated a longstanding regulatory prohibition on making financial assistance available to businesses engaged in media-oriented activity. The so-called opinion molder rule had been based on a concern about Federal agency involvement in potential prior restraint of free speech; the result was a ban on SBA assistance to businesses involved in media activities. After first considering modest revisions to the rule, SBA concluded that the concern was no longer a valid one, and that the demand for assistance from small businesses in the media field far outweighed the need for caution in this area.

Several of the latter examples involve rethinking or redesigning existing regulation. Focusing on existing regulations has been an important feature of the Executive Order,

and, as we now discuss, we are beginning to see real progress in this area.

IV. IMPLEMENTATION OF THE LOOKBACK PROVISIONS  
OF THE EXECUTIVE ORDER

Individuals who must comply with Federal rules frequently comment, often with great frustration and anger, that it is the accumulated burden of rules in effect -- many of which appear unnecessary, redundant, outdated, or downright stupid -- that is so exasperating to them. In response to these concerns, the Executive Order provides that agencies are to review existing regulations to ensure that their rules are still timely, compatible, effective, and do not impose unnecessary burdens (Section 5).

In the May 1st Report we noted that this review of existing regulation, a "lookback" process, had begun, although it had proven more difficult to institute than we had anticipated. We observed that, understandably, agencies are focused on meeting obligations for new rules, often under statutory or court deadlines, at a time when staff and budgets are being reduced; under these circumstances, it is hard to muster resources for the generally thankless task of rethinking and rewriting current regulatory programs. Six months later, we are somewhat further along, although we continue to believe that any real progress will depend on the extent to which senior policy officials recognize and attend to this effort.

It is important to emphasize what the lookback effort is and is not. It is not directed at a simple elimination or expunging of specific regulations from the Code of Federal Regulations. Nor does it envision tinkering with regulatory provisions to consolidate or update provisions. Most of this type of change has already been accomplished, and the additional dividends to be realized are unlikely to be significant. Rather, the lookback provided for in the Executive Order speaks to a fundamental re-engineering of entire regulatory systems, many of which have



remained fundamentally unchanged for 30 to 50 years. To do this successfully requires a dedicated team in an agency with broad understanding of the program's objectives, expertise in the intricacies of the regulatory program, an intimate knowledge of the stakeholders, and resourcefulness, tenacity, resolve, and support.

Probably the best example of such a re-engineering of a regulatory system is the work currently being done by the DOC's Bureau of Export Administration (BXA) to rewrite the Export Administration Regulations (EAR). This comprehensive review is intended to simplify and clarify this lengthy and complex body of regulations that establishes licensing regimes for dual-use products -- i.e., those that may have both commercial and military applications -- and to make the regulations more user-friendly, which they currently are not. The rules were first promulgated in 1949 to implement the Export Control Act of 1949. There has not been a complete overhaul of the EAR since that time. This effort is important enough that DOC has chosen it as one of its four entries for the Regulatory Plan.

In its re-engineering of the EAR, BXA is following the recommendations of the Trade Promotion Coordinating Committee (TPCC), a Presidential committee mandated by the Export Enhancement Act of 1992. BXA has already published a notice in the Federal Register requesting comment on a simplification of the program. Meanwhile, a task force within the agency has been working on a complete overhaul and restructuring of the rules. In particular, the rules are being fundamentally redirected from the current negative presumption that all exports subject to the Act are prohibited unless authorized, to a positive approach that all exports are permitted unless a license is specifically required. The agency tentatively plans to have an NPRM published by the end of this year.

A good example of an institutionalized lookback program is the continual review of selected regulations by DOT's National Highway Traffic Safety Administration (NHTSA). NHTSA has been conducting these safety standard evaluations for over 15 years, and to our knowledge, it is the only program of its kind in the Executive Branch. NHTSA rules deal primarily with automobile and light truck safety. On a regular basis, the agency selects rules from its current programs to review, evaluating not only the effectiveness of the rule and whether there are any provisions that are unnecessary, unduly burdensome, or in need of change for other reasons, but also reviewing the initial analysis itself -- whether the predicted costs and benefits have been realized, and, if not, why not. This approach not only enables the agency to modify its current rules based on analysis, but also helps the staff continually improve the analytic techniques used in assessing the costs and benefits of new rules. Indeed, its recent standards for side-impact protection resulted directly from a review of its previous standard, which revealed that the rule was not providing benefits in multi-vehicle accidents. More recently, the agency completed reviews of front seat protection in passenger cars and its glass-plastic windshield standard No. 205. NHTSA also recently published a Federal Register notice describing its future evaluation plans and soliciting public comment on which additional assessments it should pursue.

DOT's Federal Highway Administration (FHWA), like BXA, has initiated a major, "zero-based" review of its Federal Motor Carrier Safety Regulations. These are the primary body of regulations that are designed to ensure the safety of commercial trucks and drivers. The regulations have not been extensively revised since the early 1970's. The goals and objectives of the zero-base review are (1) to focus on those areas of enforcement and compliance that are most effective in reducing motor carrier accidents; (2) to reduce compliance costs; (3) to encourage innovation; and (4) to clearly and succinctly describe what is

required by the regulations. Through the zero-base review, FHWA intends to develop a unified, performance-based regulatory system that will enhance safety on the nation's highways while minimizing the burdens placed on the motor carrier industry.

Other DOT lookback efforts include FRA's revision of its power brake regulations to reduce the frequency with which railroads must inspect their brake systems. Recently, the FRA proposed performance-based rules that would reduce inspection frequencies, as long as brake systems, when inspected, meet certain brake defect ratios. Also, FAA is reviewing its regulations to identify those rules that are inconsistent with state-of-the-art technology or current industry practice. To enhance its ability to perform its statutory role without undue economic burden on the aviation industry, FAA announced a comprehensive review in January of this year, asking interested parties to identify those regulations that are believed to be unwarranted or inappropriate. The comments provided in response to this notice are assisting the agency in establishing its priorities for future regulatory changes.

USDA is also conducting several lookbacks. The Food and Nutrition Service (FNS) has proposed to revise its school meal nutrition standards, the first major modification to these standards in nearly 50 years. To ensure that children have access to healthy meals at school, USDA has updated nutrition standards to meet the Dietary Guidelines for Americans and, at the same time, USDA has streamlined the administration of the rule so that local school food service staffs may concentrate on providing healthful food for their students rather than on bureaucratic red tape.

This effort was the result of extensive outreach and substantial analysis by USDA. Although commenters on the rule

have raised concerns, the initial press reaction to the proposal was overwhelmingly positive. The New York Times concluded:

The Agriculture Department recognizes that these ironclad rules (current meal patterns) are irrelevant in a nation where most children get not only too much protein but too much fat, saturated fat, cholesterol and sodium . . . . School meals might finally catch up with late-20th-century nutrition science.

USDA and HHS are also working to re-engineer their food safety and inspection regulatory programs. Building upon their generally successful efforts to coordinate the nutrition labeling of foods, USDA and HHS are moving forward with ambitious plans to modernize the system of food safety regulation in the United States. Both Departments took steps in 1993 and 1994 to require Hazard Analysis Critical Control Point systems (HACCP) in the production of food.

The Food Safety and Inspection Service (FSIS) at the USDA has initiated a comprehensive review of the regulations that ensure the safety of all meat and poultry. The meat and poultry regulations are based upon the Federal Meat Inspection Act first passed in 1907. Although the meat and poultry statutes and regulations have been amended a number of times over the last 85 years, USDA has never undertaken a top-to-bottom review of the inspection system.

FSIS' review is intended to move the meat and poultry inspection system -- currently based upon "organoleptic" inspection, whereby an inspector uses the senses of touch, sight and smell to test the safety of the product -- towards more science-based procedures that address microbial contamination. For example, under a HACCP system, plants would identify the points along their processing line that are vulnerable to the



greatest hazards (risk of contamination), and devise plans to mitigate those hazards.

FDA, which has jurisdiction over all foods not regulated by FSIS, such as fish, fruits, and vegetables, has announced plans to greatly expand its use of HACCP systems. FDA sees HACCP as a revolutionary way to ensure that proper production processes and controls are being maintained, even when an inspector is not present. In January 1994, FDA issued a proposed rule that would require HACCP analysis and recordkeeping by all firms that process seafood in the United States. Also, after consultation with USDA, FDA published an Advance Notice of Proposed Rulemaking in August 1994 exploring the possibility of extending HACCP systems beyond the seafood industry to other food production within the next ten years.

Other agencies are also conducting lookbacks. In HHS, HCFA is looking at Medicare regulations that govern conditions of participation for home health agencies and hospitals, and conditions of coverage for the payment of end stage renal disease. HCFA believes that the existing rules are unnecessarily burdensome, outdated, and process oriented, and should be replaced with more universally applicable provisions that are patient/outcome oriented and driven by meaningful data to better ensure healthy outcomes for aged patients and those with disabilities. In redesigning these regulations, HCFA has met, and is continuing to meet, with a variety of provider and consumer representatives.

HUD has planned a review of its public housing development program rules. The current rules are outdated and contain unnecessary restrictions on the flexibility of public housing authorities (PHAs). HUD expects to revise the regulations to provide more flexibility for all participants, with even greater flexibility for the best performers. "High performer" PHAs will



have maximum latitude to develop public housing within very broad parameters, and with minimal HUD oversight; remaining PHAs will be given broadened responsibility commensurate with their abilities and areas of expertise. Streamlining the program will help to reduce a substantial pre-construction pipeline and expedite the provision of replacement housing for developments that should be fully or partially replaced.

The Office of the Comptroller of the Currency (OCC) has started a review of existing regulations on national bank lending limits to modernize, simplify, clarify, and eliminate unnecessary regulatory burden. In developing this review project, OCC designed a more efficient internal review process that involved senior agency officials earlier in the project to provide policy guidance. OCC published an NPRM in February 1994.

DOL's Pension and Welfare Benefit Administration (PWBA) has initiated a review of its rule concerning disclosure of plan information to participants. Since enactment of the Employee Retirement Income Security Act (ERISA) in 1974, there have been few modifications either to the law's reporting and disclosure provisions or to the underlying regulations. PWBA issued a Request for Information last December to solicit comments from the public concerning the adequacy and timeliness of the information provided pursuant to these rules. The agency is currently reviewing the many comments to assess the need for regulatory and/or statutory changes. Also at DOL, OSHA has started a review of its outdated walking and working surfaces standards with an eye to replacing them with performance-oriented standards to permit more flexibility in compliance.

Several Departments have used the Federal Register to gather information on those regulations that might be candidates for elimination, modification, or other improvement. DOE published a notice of inquiry in the Federal Register and has solicited

recommendations from over 200 stakeholder organizations and DOE field offices. Based on this input, DOE prepared a second notice of inquiry targeting particular areas of its regulations for review. Similarly, DOI published a notice in the Federal Register announcing its intent to review its significant existing regulations and requesting public comment on which regulations should be reviewed. After a 60-day comment period, DOI published a second notice, announcing which regulations will be reviewed, and requesting specific comments on how those regulations should be revised.

These examples of lookbacks vary from major projects well underway to initial, in some cases tentative and not fully formed, efforts. They are indicative of a serious effort by this Administration to look not only at rules that are being developed, but at the accumulation of regulatory programs that are already on the books. There is no apparent reason why every Department and agency cannot initiate at least one such project. We expect that lookbacks will become more prevalent and more productive over the coming months.

#### CONCLUSION

In our May 1st Report, we concluded that while it was too early to arrive at a final judgment regarding the success of the new system, the early indications were that there had been substantial improvement in the rulemaking process. With six months more experience and data, we are more confident that the Executive Order is making a difference, that the Administration is moving in the right direction, and that there is much to be proud of. As before, however, our optimism is guarded; we know full well that there is much to be done to obtain the benefits we are seeking to realize.

TABLE 1

EXECUTIVE ORDER REVIEWS BY CODE  
APRIL 1, 1994 - SEPTEMBER 30, 1994

AGENCY	NUMBER OF REVIEWS			ACTIONS TAKEN							AVERAGE REVIEW TIME		
	ECON SIG	OTHER THAN ECON SIG	TOTAL	WITHOUT CHANGE	WITH CHANGE BY AGENCY	WITHDRAWN BY AGENCY	SENT IMPROPERLY	RETURNED SUSPENDED	EMERGENCY	STAT/JUD DEADLINE	ECON SIG	OTHER THAN ECON SIG	ALL
USDA	21	44	65	46	12	1	5	0	0	1	14	25	22
DOC	2	5	7	5	2	0	0	0	0	0	14	7	4
DOD	1	4	5	5	0	0	0	0	0	0	48	38	40
EO	1	34	35	9	24	2	0	0	0	0	68	29	30
DOE	1	1	2	0	2	0	0	0	0	0	37	73	55
HHS	5	77	82	60	21	0	1	0	0	0	20	29	29
HUD	0	34	34	14	16	4	0	0	0	0	MA	37	37
DOJ	2	6	8	4	4	0	0	0	0	0	12	40	31
DOJ	1	5	6	5	0	0	0	0	0	1	2	8	7
DOJ	2	2	4	1	3	0	0	0	0	0	47	61	54
STATE	0	5	5	5	0	0	0	0	0	0	MA	12	12
DOT	5	26	31	21	8	1	1	0	0	0	50	16	22
TREAS	0	1	1	1	0	0	0	0	0	0	MA	2	2
VA	0	9	9	5	4	0	0	0	0	0	MA	25	25
EPA	16	31	47	9	28	2	0	0	0	0	48	39	48
ACMP	0	1	1	1	0	0	0	0	0	0	MA	39	39
ACTION	0	1	1	1	0	0	0	0	0	0	MA	35	35
AIO	0	1	1	1	0	0	0	0	0	0	MA	15	15
AT&T	2	0	2	1	1	0	0	0	0	0	MA	47	47
CMS	1	0	1	1	0	0	0	0	0	0	27	MA	27
FAR	4	3	7	5	1	1	0	0	0	0	39	40	40
FEMA	0	1	1	1	0	0	0	0	0	0	MA	14	14
GSA	0	5	5	5	0	0	0	0	0	0	MA	43	43
IRS	0	1	1	1	0	0	0	0	0	0	MA	30	30
JMWFF	0	1	1	1	0	0	0	0	0	0	MA	47	47
NASA	0	4	4	3	1	0	0	0	0	0	MA	18	18
NSF	0	1	1	0	1	0	0	0	0	0	MA	6	6
OGE	0	1	1	0	1	0	0	0	0	0	MA	71	71
OPM	0	12	12	7	3	2	0	0	0	0	MA	42	42
OTINBAG	0	1	1	1	0	0	0	0	0	0	MA	14	14
SBA	2	4	6	4	2	0	0	0	0	0	13	7	9
USIA	0	1	1	1	0	0	0	0	0	0	MA	MA	MA
TOTALS:	46	322	368	224	134	13	7	0	0	1	9	31	30
% TOTAL:	17.0%	83.0%	100.0%	57.7%	34.5%	3.4%	1.6%	0.0%	0.3%	2.3%			

TABLE 2

EXECUTIVE ORDER REVIEWS BY CODE  
OCTOBER 1, 1993 - MARCH 31, 1994

AGENCY	NUMBER OF REVIEWS			ACTIONS TAKEN							AVERAGE REVIEW TIME		
	OTHER THAN ECON SIG	ECON SIG	TOTAL	WITHOUT CHANGE	WITH CHANGE	WITHDRAWN BY AGENCY	SENT IMPROPERLY	RETURNED	SUSPENDED	EMERGENCY	STAT/JUD DEADLINE	ECON SIG	OTHER THAN ECON SIG
USDA	13	109	122	85	26	7	2	0	0	0	2	37	28
DOC	1	55	56	38	15	3	0	0	0	0	0	120	23
DOD	0	10	10	1	5	4	0	0	0	0	0	MA	55
ED	2	33	35	3	26	6	0	0	0	0	0	7	46
DOE	1	9	10	5	5	0	0	0	0	0	0	78	82
HHS	8	158	166	118	30	11	5	2	0	0	0	46	38
HUD	4	31	35	19	12	4	0	0	0	0	0	52	45
DOJ	1	40	41	29	11	1	0	0	0	0	0	4	33
DOJ	0	15	15	15	0	0	0	0	0	0	0	MA	17
DOL	1	1	2	0	2	0	0	0	0	0	0	9	20
STATE	0	6	6	5	1	0	0	0	0	0	0	MA	17
DOT	15	36	51	22	27	2	0	0	0	0	0	16	48
TREAS	2	4	6	2	4	4	0	0	0	0	0	1	70
VA	0	29	29	21	4	4	0	0	0	0	0	MA	62
EPA	16	53	69	15	38	0	0	0	0	0	16	40	53
AID	0	1	1	0	1	0	0	0	0	0	0	MA	36
CNCS	1	3	4	0	4	0	0	0	0	0	0	MA	36
EEEC	0	2	2	1	0	1	0	0	0	0	0	22	23
FAR	3	3	6	3	1	2	0	0	0	0	0	MA	116
FEMA	0	4	4	0	4	0	0	0	0	0	0	MA	38
FTIEC	0	1	1	0	1	0	0	0	0	0	0	MA	70
GSA	0	18	18	11	7	0	0	0	0	0	0	MA	36
INS	0	1	1	1	0	0	0	0	0	0	0	MA	10
INR	0	2	2	1	1	0	0	0	0	0	0	MA	116
NASA	0	8	8	6	1	1	0	0	0	0	0	MA	31
NSF	0	5	5	3	1	1	0	0	0	0	0	MA	73
OGE	0	1	1	1	0	0	0	0	0	0	0	MA	2
OMB	0	1	1	0	1	0	0	0	0	0	0	MA	108
OPPI	0	23	23	17	3	3	0	0	0	0	0	MA	22
OTHINDAG	0	1	1	0	1	0	0	0	0	0	0	MA	74
RRB	0	5	5	0	0	0	5	0	0	0	0	MA	39
SBA	3	13	16	9	6	1	0	0	0	0	0	15	42
USIA	0	3	3	3	0	0	0	0	0	0	0	MA	6

TOTALS: 71 694 755  
% TOTAL: 9.4% 90.4% 100.0%

51 238 434 57.5%  
12 2 0 0.0%  
1.6% 0.3% 0.0%  
6.8% 0.0% 0.0%  
18 33 38 2.4%

Enclosure C

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AGENCY	1989		1990		1991		1992		1993		1994		1995		TOTAL	
	A	D	A	D	A	D	A	D	A	D	A	D	A	D	A	D
USDA	200	0	163	5	236	6	253	4	199	3	266	1	100	0	1417	19
DOC	201	2	152	3	169	2	175	1	137	2	156	1	56	0	1046	11
DOD	76	3	63	1	68	0	60	3	72	2	62	0	24	0	425	9
EO	169	2	141	2	170	4	169	4	154	3	164	0	94	1	1061	16
DOE	35	0	22	2	38	0	13	10	31	0	26	0	6	0	171	12
HHS	325	3	273	9	269	16	285	6	313	4	276	3	89	2	1830	43
HUD	166	9	152	3	128	7	122	4	167	0	125	0	44	0	904	23
DOJ	79	0	118	2	106	0	117	1	125	0	89	0	28	0	662	3
DOJ	121	3	72	1	79	3	95	2	78	5	81	0	46	0	572	14
DOL	196	14	212	9	150	0	157	1	172	0	126	0	49	0	1062	24
STATE	6	0	6	0	21	0	28	2	15	0	14	0	0	0	90	2
DOIT	186	1	120	0	146	3	127	4	157	0	157	5	40	0	933	13
TREAS	433	5	449	2	392	3	452	3	461	0	363	1	135	0	2685	14
VA	58	0	111	0	69	1	88	0	84	0	60	0	15	0	485	1
ACTION	3	1	11	0	7	0	10	0	8	0	2	0	0	0	41	1
ACJS	1	0	0	0	0	0	0	0	0	0	1	0	1	0	3	0
AID	8	0	17	2	13	1	7	0	8	0	10	0	5	0	68	3
8GSEEF	1	0	0	0	0	0	0	0	0	0	2	0	0	0	3	0
CCR	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1	0
CPMSH	5	0	0	0	2	0	4	0	1	0	2	0	0	0	14	0
CNCS	0	0	0	0	0	0	0	0	0	0	14	0	5	0	19	0
CEQ	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1	0
EPA	103	12	123	8	88	6	114	5	168	1	125	1	44	1	765	34

A = APPROVED  
D = DISAPPROVED





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AGENCY	1989		1990		1991		1992		1993		1994		1995		TOTAL	
	A	D	A	D	A	D	A	D	A	D	A	D	A	D	A	D
EEQC	4	0	2	0	5	0	2	0	3	0	2	0	0	0	18	0
EOP	0	0	0	0	1	0	0	0	0	0	1	0	0	0	2	0
EXIMBANK	1	0	3	0	1	0	4	0	3	0	1	0	4	0	17	0
FENA	31	1	38	0	24	0	27	0	27	0	40	0	5	0	192	1
FFIEC	0	0	0	0	1	0	3	0	1	0	0	0	1	0	6	0
FLRA	0	0	0	0	1	0	0	0	0	0	0	0	1	0	2	0
FNCS	6	0	4	0	3	0	0	0	5	0	1	0	0	0	19	0
GSA	23	3	15	0	17	0	15	1	14	0	16	0	3	0	103	4
JMHFF	0	0	0	0	2	0	1	0	0	0	2	0	0	0	5	0
ITC	3	0	4	0	3	0	5	1	2	0	3	0	1	0	21	1
MSPB	1	0	0	0	2	0	0	0	0	0	2	0	0	0	5	0
MASA	8	0	17	0	11	1	6	0	12	0	22	0	0	0	76	1
NARA	2	0	2	0	0	0	2	0	1	0	11	0	2	0	20	0
NCLIS	1	0	1	0	0	0	0	0	0	0	0	0	0	0	2	0
INS	2	0	2	0	8	0	3	0	4	0	3	0	1	0	23	0
NEA	19	0	12	0	20	0	23	0	29	0	8	0	0	0	111	0
MEN	22	2	21	0	12	0	14	0	14	0	7	0	0	0	90	2
MHB	2	0	0	0	0	0	2	0	0	0	0	0	0	0	4	0
MSF	18	0	9	1	16	1	19	0	15	0	9	0	9	0	95	2
NTSB	1	0	0	0	0	0	1	0	1	0	3	0	0	0	6	0
OGE	0	0	2	0	1	0	2	0	2	0	1	0	0	0	8	0
OMB	1	0	0	0	11	0	2	0	1	0	2	1	12	0	29	1

A = APPROVED  
0 = DISAPPROVED

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AGENCY	1989		1990		1991		1992		1993		1994		1995		TOTAL	
	A	O	A	O	A	O	A	O	A	O	A	O	A	O	A	O
ONDCP	0	0	0	0	0	0	1	0	0	0	0	0	1	0	2	0
OPM	20	1	40	0	37	0	31	0	38	0	42	1	17	0	225	2
OSC	0	0	1	0	0	0	0	0	1	0	1	0	0	0	3	0
TRADEREP	0	0	1	0	0	0	1	0	1	0	0	0	0	0	3	0
OPIC	4	0	3	0	2	0	4	0	5	0	3	0	1	0	22	0
PANAMA	0	0	0	0	2	0	1	0	0	0	1	0	1	0	5	0
PEACE	3	0	5	0	7	0	6	1	7	0	8	0	0	0	36	1
PADC	1	0	0	0	1	0	1	0	1	0	1	0	0	0	5	0
PBGC	5	1	7	0	6	0	6	0	6	0	8	0	7	0	45	1
RRB	34	0	18	0	20	0	34	0	26	0	20	0	7	0	159	0
SSS	0	0	10	0	15	0	2	0	20	0	2	0	2	0	51	0
SBA	25	0	59	1	27	1	19	0	49	0	38	0	13	0	230	2
SSA	79	0	64	0	63	0	79	1	73	0	74	0	23	0	455	1
TVA	14	0	9	0	7	0	10	0	2	0	3	0	1	0	46	0
USIA	8	0	9	0	4	0	9	0	7	0	4	0	2	0	43	0
USTOA	0	0	0	0	0	0	0	0	0	0	4	0	0	0	4	0
FAR	33	4	66	2	20	0	40	0	53	0	23	0	20	0	255	6
CFTC	9	0	10	0	9	0	8	0	18	0	8	0	5	0	67	0
CPSC	9	0	8	0	10	0	13	1	5	0	7	0	1	0	53	1
FCC	89	0	124	0	138	0	132	0	176	0	154	0	45	0	858	0
FOIC	18	0	28	0	14	0	24	0	28	0	18	0	6	0	136	0
FERC	31	0	49	0	25	0	37	0	50	1	34	0	13	0	239	1
FHLBB	13	0	0	0	0	0	0	0	0	0	0	0	0	0	13	0

A = APPROVED  
O = DISAPPROVED

## PAPERWORKS APPROVED/DISAPPROVED SINCE 1989

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AGENCY	1989		1990		1991		1992		1993		1994		1995		TOTAL	
	A	D	A	D	A	D	A	D	A	D	A	D	A	D	A	D
FNFB	0	0	0	0	2	0	2	0	3	0	3	0	1	0	11	0
FNC	13	0	6	0	10	0	14	0	6	0	2	1	4	0	55	1
FRS	32	0	34	0	42	0	44	0	32	0	48	0	4	0	236	0
FTC	4	0	0	0	1	0	3	0	3	0	10	2	1	0	22	2
ICC	12	0	12	0	12	0	16	0	8	0	7	0	4	0	71	0
ICUA	21	0	15	0	4	0	10	0	21	0	3	0	2	0	76	0
MIGC	0	0	0	0	0	0	4	0	2	0	2	0	1	0	9	0
MRC	42	3	43	0	43	0	65	1	66	0	43	0	25	0	327	4
RTC	0	0	4	0	0	0	1	0	0	0	0	0	0	0	5	0
SEC	86	2	57	0	182	0	64	0	252	0	212	0	39	0	892	2
OTHIMJAG	0	0	0	0	6	0	2	0	11	0	5	0	2	0	26	0
OTIENPC	0	0	1	0	0	0	1	0	0	0	0	0	0	0	2	0
TOTAL	3122	72	3021	53	2999	55	3092	56	3456	21	3043	17	1068	4	19799	278

A = APPROVED  
D = DISAPPROVED

NO. 36 1993

Enclosure  
E

Ms. Claudia Cooley  
Executive Secretary  
Department of Health and Human Services  
Washington, D.C. 20201

Dear Ms. Cooley:

We are returning, for your reconsideration, the Department of Health and Human Services rule entitled, "What is Not Income." This is a discretionary rule that would apply nationwide a Ninth Circuit court ruling that the Social Security Administration may not consider Department of Veteran's Affairs unusual medical expenses (UME) as income for purposes of determining Supplemental Security Income (SSI) eligibility. The rule would instead treat UME as third party liability which does not count as income under SSI eligibility rules. The effect of the rule is to increase the benefit level for some recipients and to increase participation in both the SSI and Medicaid programs. We have concluded that the rule as presently written does not meet the requirement under Executive Order No. 12866 (E.O. 12866) that a planned regulatory action of an agency be consistent with the President's priorities (Sec. 2 (b)).

On August 4, 1993, the President signed E.O. 12857 establishing a mechanism to monitor total costs of direct spending programs. In the event that actual or projected costs exceed targeted levels, the President's budget must address adjustments in direct spending. To comply with the Executive order, the Office of Management and Budget (OMB) submitted a report to Congress in early September outlining the spending targets for FY 1994-1997. These targets may only be adjusted for certain items such as growth in beneficiary population.

OMB supports the underlying policy goals of the rule. However, as indicated above, the effect of the rule is to increase direct spending by increasing the benefit level for some recipients and to increase participation in both the SSI and Medicaid programs. In light of the direct spending targets outlined in E.O. 12857, this rule in its present form does not meet the requirements under E.O. 12866. We therefore request that you develop an alternative means of achieving your policy objective through regulation or more directly through a



legislative effort, separate or as a part of the FY 1995 Budget submission. We offer whatever assistance we can provide for this effort.

Sincerely,

A handwritten signature, likely of Sally Katzen, consisting of a stylized 'S' and 'K'.

Sally Katzen



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

Enclosure  
F

ADMINISTRATOR  
OFFICE OF  
INFORMATION AND  
REGULATORY AFFAIRS

DEC 29 1993

The Honorable Donna Shalala  
Secretary  
Department of Health  
and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Secretary Shalala:

We have had under Executive Order 12866 review a proposed Food and Drug Administration (FDA) regulation entitled "Proposal to Establish Procedures for the Safe Processing, Packaging, Storage, and Distribution of Smoked Fish, Smoke-Flavored Fish, and Salted Fish." Among other things, the rule would establish specific cooking times, temperatures, and salt content requirements for all types of smoked or salted fish that are consumed without further cooking. All fish, except for certain small, highly salted fish like anchovies, would have to be eviscerated (gutted) before smoking or salting. Sanitation practices similar to those contained in existing FDA guidelines would become mandatory.

According to FDA, these rules respond to the increased use of vacuum packing of smoked and salted fish, a high prevalence of Listeria bacteria in smoked fish processing facilities and products in New York State, and the failure of many firms in the smoked fish industry to follow sanitary and safe processing guidelines. The FDA states that these factors warrant the proposed regulatory action for the smoked and salted fish industry, notwithstanding the proposed safe seafood processing regulations (seafood HACCP) that OMB cleared on December 14, 1993, which included detailed guidelines (virtually identical to those in the present item) specifically for smoked and salted fish processing. While I strongly endorse the goal of producing safer seafood products, the information presented to date has not demonstrated that smoked and salted fish production warrants the proposed regulation, or that more cost-effective alternatives are not available. Accordingly, I am returning the smoked and salted fish proposal for further consideration by you and your staff.

The draft proposed rule discusses the safety problems associated with smoked, smoke-flavored, and salted fish production, but these data do not indicate an existing or emerging risk that would justify an across-the-board mandatory regulation for all such smoked and salted fish production. The FDA identifies two concerns linked to smoked and salted fish: botulism and listeriosis. The preamble discusses several fatal cases of

botulism in the U.S. linked to smoked fish in the early 1960s, and several fatalities in the mid-1980s due to botulism from unviscerated, salted fish. The cases in the early 1960s involved vacuum packed, smoked fish. Based on a 1988-1989 study, the FDA is concerned that, after a decline in the use of vacuum packing, the use of such packaging is increasing. However, the FDA reports no evidence of increased frequency of botulism cases for smoked fish, with or without vacuum packaging, from 1988 to the present.

According to FDA's data, the few reported cases of seafood-related botulism since the early 1960s all have been linked to ungutted, salted fish. The most serious of the four reported cases occurred in Egypt. Although these isolated cases may show that particular enforcement attention should be paid to certain types of salted fish, especially of foreign origin, they do not justify the broad-brush regulatory approach proposed by FDA for all U.S.-processed, smoked and salted fish.

The second risk upon which FDA predicates the proposed regulatory action is listeriosis. The preamble states that the disease is a "relatively rare" illness in the U.S., notes that it may be impossible to completely eliminate Listeria from all foods, and identifies no outbreaks of listeriosis in the U.S. from smoked and salted fish (although two outbreaks and one case are linked to unidentified "seafood"). One case of listeriosis from smoked or salted seafood is identified from the consumption of smoked mussels in New Zealand.

Based on the information presented to date, FDA has not demonstrated that present practices in the U.S. smoked and salted fish processing industry are causing risks that would justify an industry-wide mandatory rule. We note once more that virtually identical provisions have been incorporated into the guidance document that accompanies the HACCP proposal already cleared by OMB.

Executive Order 12866 not only requires an agency to identify and assess the significance of a particular problem it is seeking to correct and to consider alternative ways (other than regulation) of solving the problem, but it further provides that when an agency chooses to regulate, it do so in the least intrusive and most cost-effective manner possible, and that it strive for rules whose benefits exceed their costs. In this case, FDA has chosen a command-and-control regulation, rather than a performance standard, by establishing strict time-temperature-salinity (TTS) requirements that all producers must follow, according to the type of process being used. All firms (even those that have demonstrated a long history of making safe products) would have to produce smoked and salted fish with at least as much smoking, cooking, and salting as specified in the regulation. For example, all hot-process, smoked fish would have to be brined to

contain at least 3.0 percent water-phase salt and would have to be heated to at least 145 degrees Fahrenheit for no less than 30 minutes.

Moreover, by FDA's current estimates, the regulation will be very costly and burdensome. FDA tentatively estimates \$9 million in annual compliance costs for an industry with total annual revenues of \$100 million--in other words, almost ten percent of industry revenues would be consumed by additional compliance costs. The cost per firm is estimated to range from \$10,000 to \$50,000. The unusually large cost of these regulations as a percentage of average firm revenue would likely make this proposal prohibitively expensive for many of the small firms that comprise a majority of this industry.

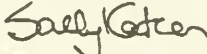
In addition to these large direct costs, FDA has not considered some compliance burdens which are important despite the difficulty in quantifying them, including changes in taste and texture that could occur as a result of the TTS requirements, and a reduction in the diversity of available products due to the inflexible nature of the TTS rule.

FDA has sought to quantify the benefits of this regulation, and we recognize that its efforts to do so are obviously hampered by an uncertain risk baseline which is the result of a paucity of data on illnesses from smoked and salted fish consumption. We have therefore not requested a specific demonstration that the benefits justify the costs of this regulation, although such a showing is typically required for Executive Order 12866 review.

During the last two weeks, we have had very productive discussions with the FDA staff on alternative ways of approaching the issues identified in this draft proposal. We have suggested performance standards rather than command-and-control TTS standards; more targeted regulatory actions to focus on seafoods shown to be risky (e.g. unviscerated fish); and incorporation of these provisions as guidance under the HACCP regulation that we cleared for publication on December 14, 1993. Given the progress to date, it may well be that we could resolve these issues given additional time, but the 90-day limit for review under Executive Order 12866 is upon us. Also, I understand that FDA does not plan to publish the seafood HACCP proposal until the New Year. With our concerns provided in writing, you may well decide to raise the smoked and salted fish options for public comment in the HACCP proposal's preamble, thus placing all the related issues before the public in a single document in a timely manner.

We greatly appreciate the efforts FDA staff have taken to reach closure on this issue, and we will work diligently with the Department should FDA have additional information or ideas for regulation of smoked and salted fish processing. Please do not hesitate to call me if you wish any further clarification of our position.

Sincerely,



Sally Katzen  
Administrator  
Office of Information  
and Regulatory Affairs

cc: Commissioner Kessler  
Kevin Thurn





EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

ADMINISTRATOR  
OFFICE OF  
INFORMATION AND  
REGULATORY AFFAIRS

May 15, 1995

Enclosure  
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Mr. Kevin Thurm  
Chief of Staff  
Department of Health and Human Services  
Washington, D.C. 20201

Dear Mr. Thurm:

On January 19, 1995, we received from the Food and Drug Administration (FDA) for Executive Order (E.O.) No. 12866 review the draft final rule entitled "Nutrient Content Claims and Health Claims: Restaurant Foods." On April 18, 1995, the period for review was extended. For the reasons stated below, we are returning the draft regulation to you for further analysis and consideration.

The FDA's regulatory requirements for nutrient claims (such as "light fare" or "may reduce your risk of cancer") now apply principally to such claims made for packaged foods, but they also apply to such claims made for restaurant foods when the claim is found on a placard or poster. The draft rule would extend the regulatory requirements to nutrient claims and health claims that are included in restaurant menus. As a result, under the draft rule, a restaurant could make a nutrient or health claim in its menu only if the claim satisfied FDA requirements. These requirements would apply not only to the large regional and national restaurant chains, but also to the small, individually owned and operated neighborhood restaurants around the country.

The Executive Order requires each agency, before deciding to regulate, to identify the problem it seeks to remedy and to assess the costs and benefits of its intended regulation. These steps are necessary for the agency to assure itself that its regulation will help solve the problem it seeks to address, that it will do so in a tailored, sensible, and cost-effective manner, and that the rule's benefits will justify the costs. Based on the materials we have reviewed and on the conversations we have had with FDA staff, we believe that FDA has not undertaken the requisite analysis to satisfy these principles.

As you are aware, when FDA issued the regulations under the Nutrition Labeling and Education Act, it initially exempted restaurant menus. FDA's decision not to cover menus was challenged in federal district court, and the agency subsequently issued a notice indicating its inclination to change the

regulation to cover restaurant menus. In light of these circumstances, we believe further analysis on the need for and the likely effects of the draft rule would be in order.

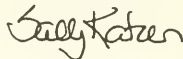
Specifically, FDA supports its draft rule by pointing out that current claims may be of little value if they fail to satisfy standardized criteria and that consistent labeling requirements are necessary to prevent consumers from becoming confused by the differences between packaged and restaurant foods. We are not aware, however, of any analysis by the agency indicating the extent to which current nutrient and health claims in restaurant menus fail to meet FDA's definitions, or whether consumers are experiencing confusion or are concerned about variations between packaged and restaurant foods. Moreover, FDA has not addressed whether the data equally support the regulation of nutrient claims as opposed to health claims.

FDA should also consider how many restaurants would be likely to comply with the new regulation by conforming to the requirements and how many others would instead stop making health and nutrient claims altogether. If it were determined that the latter outcome is likely to result from the regulation, to what extent would the consumer lose valuable existing information? If the former, to what extent would costs be incurred beyond the cost of changing menus (the primary basis of FDA's cost estimates)?

We are particularly concerned that a number of restaurants that would be affected by the regulation are small restaurants. Whereas the large regional and national restaurant chains have standardized offerings and menus, there are thousands of small restaurants around the country that change their offerings and menus on a frequent basis. Consistent with the Regulatory Flexibility Act, we think FDA should consider more fully the extent to which the rule would affect these small restaurants, as opposed to restaurant chains.

The objective of FDA's draft regulation is obviously beneficial -- to insure that consumers have access to accurate information when selecting foods to consume. On the other hand, we believe strongly in the need for tailored, cost effective regulations developed according to the principles of E.O. No. 12866. Additional analysis will help determine if the draft regulation meets these principles. Therefore, pursuant to Sections 1(b)(1), 1(b)(4), 1(b)(5), and 6(b)(3) of the Executive Order, we are returning the draft final regulation to you for further analysis and consideration.

Sincerely,



Sally Katzen

Report to the President  
*on*  
Executive Order No. 12866  
Regulatory Planning and Review



May 1, 1994  
Office of Information and Regulatory Affairs  
Office of Management and Budget

# **federal register**

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**Tuesday  
May 10, 1994**

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**Part VI**

**Office of  
Management and  
Budget**

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**Report on Executive Order No. 12866,  
Regulatory Planning and Review; Notice**

**OFFICE OF MANAGEMENT AND BUDGET****Report on Executive Order No. 12866, Regulatory Planning and Review**

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Publication of report to the President

**SUMMARY:** On September 30, 1993, the President signed Executive Order No. 12866, "Regulatory Planning and Review." On the same day, the President directed the Administrator of the Office of Information and Regulatory Affairs to monitor OIRA's review activities during the first six months of the Executive Order and submit a report on these activities to the President and the Vice President by May 1, 1994. The President also directed that the report be published in the Federal Register.

Pursuant to the President's directive, this document contains the text of the report and an executive summary of the report, transmitted to the President on May 1, 1994.

**FOR FURTHER INFORMATION CONTACT:** Don Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, (202) 395-7340.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs.

May 1, 1994.

**Report on Executive Order No. 12866 Executive Summary**

On September 30, 1993, President Clinton signed Executive Order No. 12866, "Regulatory Planning and Review." On that same day, he issued a memorandum directing the Administrator of OMB's Office of Information and Regulatory Affairs to "monitor [her] review activities over the next six months and, at the end of this period, to prepare a report on [her] activities." OIRA's Report covers the implementation of Executive Order No. 12866 from October 1, 1993, through March 31, 1994.

As set forth in greater detail in the report, implementation of the new Executive Order is well underway. At this point, we are beginning to see some of the changes that were envisioned in the Order. We have, however, encountered greater delays than anticipated in implementing some aspects of the Order. And some of the processes established by the Order, while initiated on schedule, are still in

the formative stages. As a result, it is too early to arrive at a final judgment regarding the success of the new system; however, the early indications are that there is substantial improvement in the rulemaking process.

Executive Order No. 12866 clearly articulates President Clinton's regulatory philosophy and his view of how the nation's regulatory system should work. Most fundamentally, as the Order states in its opening lines:

The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable.

A number of themes run through the Order. Within the Executive Branch, it encourages cooperation and coordination among OMB and the agencies. With respect to the public, it emphasizes openness and early involvement by all of the interested entities, including particularly State, local, and tribal participation in the rulemaking process.

The Order reaffirms the primacy of the agencies in the regulatory decision-making process and sets forth principles to which they are to adhere, to the extent permitted by law, when developing rules. At the same time, the Order reaffirms the legitimacy of centralized review. The process established for centralized review distinguishes between significant and non-significant regulatory actions so as to focus OIRA's review activities on where there will likely be the most benefit. It also emphasizes sound and timely analysis, early and frequent consultation, and it reduces delay and removes secrecy in the review process by establishing time limits and disclosure requirements.

Many of the objectives of the Order have begun to be realized. Regarding cooperation and public involvement, one of the major changes during the six-month period is the improved relationships that have been developed between OIRA and the agencies. While remnants of the mistrust and hostility that often characterized relationships between the career staffs over much of the past decade still exist, for the most

part this has been replaced with a spirit of cooperation.

Much of the credit for the improved environment goes to the newly created Regulatory Policy Officers (RPO), high level agency officials who represent the agency head in efforts to implement the Order and improve the regulatory process. The RPOs work together in the Regulatory Working Group (RWG) chaired by the OIRA Administrator and attended by the White House Regulatory Policy Advisors—which meets regularly to discuss regulatory issues. The RWG has proven to be a useful forum not only for discussion of ideas and the exchange of best practices, but also for coordinating regulatory activities that affect more than one agency.

Regarding public participation, agencies appear to be making efforts to engage the public earlier and more fully in the regulatory process. For its part, OIRA has held two conferences (and is planning a third) with representatives of State, local, and tribal governments to improve the consultation process between them and Federal regulators. OIRA has also taken steps to improve the participation of the small business community in the rulemaking process. OIRA joined the Small Business Administration (SBA) to sponsor a Small Business Forum on Regulatory Reform in March 1994 to discuss how the regulatory process can better address the special needs of small businesses.

With respect to the objectives of selectivity and timeliness, OIRA received and reviewed 578 regulatory actions from October 1, 1993, through March 31, 1994. (See Table 1.) The 578 rules received and reviewed by OIRA for the six-month period is approximately half what it was for comparable periods in previous years. The number of rules under review at any given time has also shown a significant decline. For example, on July 1, 1993 (three months before the Executive Order was signed), 254 regulations were under review; on March 31, 1994 (six months after the Executive Order was signed), 68 rules were under review.

These figures reflect a longer than anticipated start-up period during which many non-significant rules continued to be sent to OIRA for review. This is a result of difficulties some agencies have had in instituting internal systems to manage the listing process that is to distinguish between significant and non-significant regulatory actions. Where the process has been implemented it has been helpful.

In total, OIRA has received lists designating 1,624 regulatory actions as significant or non-significant. (These



rules would not all be rules reviewed during the six-month period—and hence they all do not appear on Appendix A—because, if they are non-significant, they would not have been submitted for review, and even if they are significant, they may not have been ready to be submitted for review and reviewed during the period covered by the report.) Of the 1,624 regulatory actions, almost two-thirds were designated non-significant, one-third significant; specifically, agencies designated (and OMB agreed) that 1,047 (or 64%) were non-significant; 316 (or 19%) were designated by the agency as (and OIRA agreed that they were), significant; and the remaining 261 (or 16%), were designated significant by OMB. Stated another way, the agency and OMB agreed with the initial designation for 83% of the regulatory actions; in only 16% was there a difference of view.

The definition of "significant" regulatory action has been the source of much discussion both within agencies and departments and between OIRA and the agencies (and it has been at least a partial source of the start-up delays we have experienced). Some of the differences may be attributable to the difference in the natural inclinations of rule writers, who might prefer not to have another review layer to go through, and the natural inclinations of reviewers, who might prefer to see more, rather than fewer rules, to ensure that everything that should be reviewed is reviewed. In any event, we have found that the number of instances where there is an initial difference of opinion as to significance decreases (sometimes substantially) with the agencies' increased experience with the process. In some cases, it is simply a function of the agencies' not knowing how much information to provide to enable OIRA to agree that the regulation is non-significant. In other cases, the agencies and OMB discuss the reasons for their different judgments so that the staffs come to an understanding and agreement on the definition of significance.

With respect to timeliness, the Executive Order establishes strict time limits on OIRA review in most cases 90 days to balance the need for adequate time to conduct review with the need to streamline the regulatory process and prevent unwarranted delay. OIRA has made a concerted effort to meet not only the letter of this requirement, but its spirit as well, and this goal of the Order is clearly being accomplished. Of the 578 rules received and reviewed between October and March, only three were extended beyond the 90-day limit.

Each of these rules was extended at the request of the regulating agency to permit completion of interagency reviews that were in fact concluded in less than three weeks after the extension was requested.

In addition, the Order establishes disclosure requirements for both OIRA and the agencies to increase openness, accessibility, and accountability. On July 1, 1993, as one of her first actions, the OIRA Administrator began making available a daily list of draft agency regulations under review at OIRA. This was done in order to remove the stigma of secrecy that had previously characterized regulatory review, and to make the review process more transparent. In addition, lists and statistics related to regulatory review for each month are compiled and made available by early the following month. Meetings and telephone calls with persons outside the Executive Branch on regulations under review are now logged, and these logs are made publicly available. And other material related to regulatory review is kept in a public file, forwarded to the agencies, or made available upon request, in accordance with the Order. These various disclosure procedures are working well and have helped restore the integrity of the regulatory review process.

Two aspects of the Executive Order—the regulatory planning mechanism and review of existing regulations—are not covered in detail in the report, because although both are underway and on schedule, it is too early to judge their success. The regulatory planning process began with an agencies policy meeting held in early April and guidance on the process issued by the OIRA Administrator immediately after the meeting. This began the planning cycle that will result in the publication of the Regulatory Plan in October 1994. Regarding review of existing regulations, agencies submitted to OIRA in late December their plans for review of existing regulations. Several of the agencies have published notices requesting the public to suggest candidates for review. These and other approaches to reviewing existing regulations are being discussed within the RWG, and further action is planned.

In the memorandum from the President, we were asked to identify any provisions of the Executive Order that should be changed. As noted above, it is premature to make specific recommendations. We have, however, identified a number of issues that warrant further consideration and that ultimately may require changes to the Executive Order, its implementation by OIRA, or both.

The importance of regulations in our society makes it imperative that the process by which they are developed and reviewed be characterized by integrity and accountability. During the first six months of Executive Order No. 12866, we have made major strides toward these goals. We have moved the regulatory process from one criticized for delay, favoritism, and secrecy to one that is principled, professional, and productive. Much remains to be done, but we have made a strong beginning.

Report on Executive Order No. 12866  
May 1, 1994.

On September 30, 1993, President Clinton signed Executive Order No. 12866, "Regulatory Planning and Review" (attached). On that same day, he issued a memorandum directing the Administrator of OMB's Office of Information and Regulatory Affairs (OIRA) to "monitor [her] review activities over the next six months and, at the end of this period, to prepare a report on [her] activities" (attached). The President also directed that "[t]he report . . . identify any provisions of the order that, based on [her] experience or on comments from interested persons, warrant reconsideration so that the purposes and objectives of this order can be better achieved." He directed that this report be submitted to the Vice President and the President by May 1, 1994, and be published in the Federal Register.

This report will describe and comment on what has occurred during the first six months of implementation of Executive Order No. 12866 (from October 1, 1993, through March 31, 1994), and will identify issues that could lead to suggested changes in the future. Although six months is a short time to bring about the fundamental changes in the Government's regulatory process envisioned by the Executive Order, the outlines of the new system have clearly begun to emerge. In some cases, we can point to unqualified successes; in others, we have encountered unexpected difficulties in implementing the system. To a large degree, it is too early to assess the success of the new system.

This report consists of four chapters. The first section introduces the subject with a brief history of the major regulatory programs of the U.S. Government and a general discussion of the nature of regulation. The second chapter describes the Clinton Administration's regulatory philosophy and the objectives of Executive Order No. 12866. The third section describes the implementation of the Executive Order during the first six months. The

fourth section comments generally on issues raised as a result of our experience or from comments received from agencies and members of the public.

#### I. History of the Regulatory Programs of the U.S. Government

The Federal Government affects the lives of its citizens in a variety of ways through taxation, spending, grants and loans, and through regulation. Over time, regulation has become increasingly prevalent in our society, and the importance of our regulatory activities cannot now be overstated.

##### *The History of Major Regulatory Programs*

Federal regulation as we know it began in the late 19th century with the creation of the Interstate Commerce Commission, which was charged with protecting the public against excessive and discriminatory railroad rates. The regulation was economic in nature, setting rates and regulating the provision of railroad services. Having achieved some success, this administrative model of an independent, bipartisan commission, reaching decisions through an adjudicatory approach, was used for the Federal Trade Commission (1914), the Water Power Commission (1920) (later the Federal Power Commission), and the Federal Radio Commission (1927) (later the Federal Communications Commission). In addition, during the early 20th century, Congress created several other agencies to regulate commercial and financial systems—including the Federal Reserve Board (1913), the Tariff Commission (1916), the Packers and Stockyards Administration (1916), and the Commodities Exchange Authority (1922)—and to ensure the purity of certain foods and drugs, the Food and Drug Administration (1931).

Federal regulation began in earnest in the 1930s with the implementation of wide-ranging New Deal regulatory programs.

Some of the New Deal economic regulatory programs were implemented by the Federal Home Loan Bank Board (1932), the Federal Deposit Insurance Corporation (1933), the Commodity Credit Corporation (1933), the Farm Credit Administration (1933), the Securities and Exchange Commission (1934), and the National Labor Relations Board (1935). In addition, the jurisdiction of both the Federal Communications Commission and the Interstate Commerce Commission were expanded to regulate other forms of communications (e.g., telephone and

telegraph) and other forms of transport (e.g., trucking). In 1938, the role of the Food and Drug Administration was expanded to include prevention of harm to consumers in addition to corrective action. The New Deal also called for the establishment of the Employment Standards Administration (1933), and of Social Security (1933) and related programs.

A second burst of regulation began in the late 1960s with the enactment of comprehensive, detailed legislation intended to protect the consumer, improve environmental quality, enhance work place safety, and assure adequate energy supplies. In contrast to the pattern of economic regulation adopted before and during the New Deal, the new social regulatory programs tended to cross many sectors of the economy (rather than individual industries) and affect industrial processes, product designs, and by-products (rather than entry, investment, and pricing decisions).

The consumer protection movement led to creation in the newly formed Department of Transportation of several agencies designed to improve transportation safety. They included the Federal Highway Administration (1966), which sets highway and heavy truck safety standards; the Federal Railroad Administration (1966), which sets rail safety standards; and the National Highway Traffic Safety Administration (1970), which sets safety standards for automobiles and light trucks. Regulations were also authorized pursuant to the Truth in Lending Act, the Equal Credit Opportunity Act, the Consumer Leasing Act, and the Fair Debt Collection Practices Act. The National Credit Union Administration (1970) and the Consumer Product Safety Commission (1972) were also created to protect consumer interests.

In 1970, the Environmental Protection Agency was created to consolidate and expand environmental protection programs. Its regulatory authority was expanded through the Clean Air Act (1970), the Clean Water Act (1972), the Safe Drinking Water Act (1974), the Toxic Substances Control Act (1976), and the Resource Conservation and Recovery Act (1976). This effort to improve environmental protection also led to the creation of the Materials Transportation Board (1975) (now part of the Research and Special Programs Administration in the Department of Transportation) and the Office of Surface Mining Reclamation and Enforcement (1977) in the Department of the Interior.

The Occupational Safety and Health Administration (1970) was established

in the Department of Labor to enhance work place safety. It was followed by the Mining Enforcement and Safety Administration (1973), now the Mine Safety and Health Administration, also in the Department of Labor. The Pension Benefit Guaranty Corporation was directed to administer pension plan insurance systems in 1974.

Also in the 1970s, the Federal Government attempted to address the problems of the dwindling supply and the rising costs of energy. In 1973, the Federal Energy Administration (FEA) was directed to manage short-term fuel shortages. Less than a year later, the Atomic Energy Commission was divided into the Energy Research and Development Administration (ERDA) and an independent Nuclear Regulatory Commission. In 1977, the FEA, ERDA, the Federal Power Commission, and a number of other energy program responsibilities were merged into the Department of Energy and the independent Federal Energy Regulatory Commission.

Another significant regulatory agency, the Department of Agriculture (1862), has grown over time so that it now regulates the price, production, import, and export of agricultural crops; the safety of meat, poultry, and certain other food products; a wide variety of other agricultural and farm-related activities; and broad-reaching welfare programs. Agriculture regulatory authorities have changed over time, but now include the U.S. Forest Service (1905), the Farmers Home Administration (1921), the Soil Conservation Service (1935), the Agricultural Stabilization and Conservation Service (1961), the Food and Nutrition Service (1969), the Agricultural Marketing Service (1972), the Federal Grain Inspection Service (1976), the Animal and Plant Health Inspection Service (1977), the Foreign Agricultural Service (1974), the Food Safety and Inspection Service (1961), and the Rural Development Administration (1990).

The consequence of the long history of regulatory activities is that Federal regulations now affect virtually all individuals, businesses, State, local, and tribal governments, and other organizations in virtually every aspect of their lives or operations. Some rules are based on old statutes; others on relatively new ones. Some regulations are critically important (such as the safety criteria for airlines or nuclear power plants); some are relatively trivial (such as setting the times that a draw bridge may be raised or lowered). But each has the force and effect of law and each must be taken seriously.

### The Nature of Regulation

It is conventional wisdom that competition in the marketplace is the most effective regulator of economic activity. Why then is there so much regulation? The answer is that markets are not always perfect and when that occurs, society's resources may be imperfectly or inefficiently used. The advantage of regulation is that it can improve resource allocation or help obtain other societal benefits. For example, consider the following situations:

- Certain markets may not be sufficiently competitive, thus potentially subjecting consumers to the harmful exercise of market power (such as higher prices or artificially limited supplies). Regulation can be used to promote competition (for example, removing barriers to entry) and to ensure that firms engage in fair trade practices such as the sale of dangerous substances.
- In an unregulated market, firms and individuals may impose costs on others—including future generations that are not reflected in the prices of the products they buy and sell. They may pollute streams, cause health hazards, or endanger the safety of their workers or customers. Regulation can be used to reduce these harmful effects by prohibiting certain activities or imposing the societal costs of the activity in question on those causing harm. One goal of regulation is to induce private parties to act as they would if they had to bear the full costs that they impose on others.
- Similarly, in an unregulated market, firms and individuals may not have incentives to provide individuals with accurate or sufficient information needed to make intelligent choices. Firms may mislead consumers or take advantage of consumer ignorance to market unsafe or risky products. Regulation may be needed to require disclosure of information, such as the possible side effects of a drug, the contents of a food or packaged good, the energy efficiency of an appliance, or the full cost of a home mortgage.
- Even when consumers have full information, the Government may wish to protect individuals, especially children, from their own actions. Regulation may thus be used to restrict certain unacceptable or harmful practices.
- Regulation can also be beneficial in achieving goals that reflect our national values, such as equal opportunity and universal education, or a respect for individual privacy.

There are also many potential disadvantages of regulating, to the Government, to those regulated, and to society at large.

- The direct costs of administering, enforcing, and complying with regulations may be substantial. Some of these costs may be borne by the Government, while others are paid for by firms and individuals, eventually being reflected in the form of higher prices, lower wages, reduced output, and investment, research, and expansion foregone.
- There are also disadvantages of regulation that are difficult to measure, such as adverse effects on flexibility and innovation, which may impair productivity and competitiveness in the global marketplace, and counterproductive private incentives, which may distort investment or reduce needed supporting activities.

In short, regulations (like other instruments of government policy) have enormous potential for both good and harm. Well-chosen and carefully crafted regulations can protect consumers from dangerous products and ensure they have information to make informed choices. Such regulations can limit pollution, increase worker safety, discourage unfair business practices, and contribute in many other ways to a safer, healthier, more productive, and more equitable society. Excessive or poorly designed regulations, by contrast, can cause confusion and delay, give rise to unreasonable compliance costs in the form of capital investments and on-going paperwork, retard innovation, reduce productivity, and accidentally distort private incentives.

The challenge for regulators is to approach their task with an appreciation and respect for the complexity of the problems they must solve and the diversity of the individuals and institutions their work affects. In doing this, they need to balance a number of conflicting objectives, to apply sensitivity and judgment to the best available information, and ultimately to achieve the most effective means to the desired ends. The efforts to do this, especially in the recent past, have not been particularly successful, and the American people have indicated their irritation, if not anger, at the maze of inconsistent, duplicative, and excessive rules that can cause more harm than good.

Executive Order No. 12866 was developed to bring the Government back to the task at hand—to design sensible regulations that improve the quality of our life without imposing unnecessary

costs and to do so in a way that is efficient, fair, and accountable to the American people.

### II. The Objectives of Executive Order No. 12866

Executive Order No. 12866 clearly articulates President Clinton's regulatory philosophy and his view of how the nation's regulatory system should work. Most fundamentally, as the Order states in its opening lines:

The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable.

The Order sets out specific goals: The objectives of this Executive Order are to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public.

In its first section, Executive Order No. 12866 sets forth the specific philosophy and principles that are to govern regulatory development. This is worth quoting at this point because it so succinctly describes the philosophy that the Order is established to implement:

Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including



potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

#### *Regulatory Principles*

The Order then lists 12 principles of regulation (Section 1(b)) that, to the extent permitted by law, agencies are to follow when considering and developing regulating. These principles can be viewed as a series of questions to be raised by the agency, begins with identifying the problem the agency is trying to solve or the situation it is trying to change. How serious is it, compared with other problems the agency faces? What will this proposed regulation do? How sure is the agency that it will do it? Will the proposed regulation have any unintended benefits? Any unintended costs? Create any counterproductive private incentives? Is there any other approach that would achieve the same objective better? Is there a way of modifying the proposed regulation to achieve greater benefits for the same costs or to achieve the same benefits for fewer costs?

Two themes emerge from these principles: the need for data and for analysis, particularly of alternative ways to solve the problem. It is the responsibility of regulators to obtain and rely on the best reasonably obtainable scientific, technical, or economic data, as may be called for in a particular instance. The data should be assembled and analyzed objectively, without preconceived notions of the outcome. At the same time, it is clear that as the state of scientific knowledge advances, technology develops and changes, and economic forecasts are revised, there may be legitimate disputes about what constitutes the best available data. That being the case, the quest for the best should not be the enemy of the practicable.

It is also the responsibility of regulators to be disciplined in analyzing the benefits and costs of proposed regulations and alternative ways of solving the problem, so that they can attest not only that the benefits of their regulations outweigh their costs, but also that their regulations are designed in the most cost-effective manner possible. Such a statement of principle would not seem to be controversial, yet the use of benefit-cost analysis has been one of the most contentious issues in the regulatory arena during the last twelve years.

Those who criticize benefit-cost analyses believe that it is often difficult (or even impossible or morally improper) to quantify or place a dollar

value on such benefits as lives saved, improved air quality, or reduced discrimination. Others believe that while it may be difficult to quantify or place a dollar value on certain costs—such as reduced flexibility, the loss of innovation, or counterproductive incentives to cheat—generally costs are easier to measure than benefits, so that undertaking a benefit-cost analysis will, they believe, skew the decision-making process against the adoption of needed regulations.

While there is no easy response to these concerns, the Executive Order stresses not only that the anticipated effects of a regulation should be quantified to the extent possible, but also that those that cannot be quantified—whether they be benefits or costs—should nevertheless be considered. This underscores that the decision-maker should consider all of the anticipated effects in deciding whether, on balance, society as a whole will benefit from the proposed regulatory action.

#### *Responsibilities of the Various Participants*

How these objectives are to be incorporated into a regulatory system is the subject of the rest of the Executive Order. It begins by affirming the primacy of the regulatory agencies, the legitimacy of centralized review, and the areas of responsibilities for each.

The process of developing regulations must begin with the agencies to which Congress has assigned statutory regulatory authority and responsibilities. These agencies are the repositories of significant substantive expertise and experience in a particular field. An agency's activities are sometimes driven by statutory mandates; there is also frequently a substantial amount of discretion involved. In either event, it is the agency itself that must be responsible for carefully identifying the problem to be addressed, analyzing the source of the problem (including whether existing regulations or other laws have created, or contributed to, the problem and whether those regulations or other laws can be modified to achieve the regulatory goals more effectively), assessing the importance of that problem, and determining the proper solution to it.

The Order assigns the task of centralized review to OMB's OIRA, which in the words of the Executive Order, is the "repository of expertise concerning regulatory issues, including methodologies and procedures that affect more than one agency, this Executive Order, and the President's

regulatory policies." With such expertise, OIRA's role is to "ensure that regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive Order, and that decisions made by one agency do not conflict with the policies or actions taken or planned by another agency." (Section 2(b).)

The Vice President is designated as "the principal advisor to the President on . . . regulatory policy, planning, and review." The Order also names 12 White House regulatory policy "Advisors" who are to assist the President and Vice President in specified tasks. These include: (1) The Director of OMB; (2) the Chair (or another member) of the Council of Economic Advisors (CEA); (3) the Assistant to the President for Economic Policy (NEC); (4) the Assistant to the President for Domestic Policy (DPC); (5) the Assistant to the President for National Security Affairs (NSA); (6) the Assistant to the President for Science and Technology (OSTP); (7) the Assistant to the President for Intergovernmental Affairs (IGA); (8) the Assistant to the President and Staff Secretary; (9) the Assistant to the President and Chief of Staff to the Vice President (OVP); (10) the Assistant to the President and Counsel to the President; (11) the Deputy Assistant to the President and Director of the White House Office on Environmental Policy (OEP); and (12) the Administrator of OIRA, who is to "coordinate communications relating to this Executive Order among the agencies, OMB, the other Advisors, and the Office of the Vice President." (Section 2(c).)

#### *Scope of the Executive Order*

The scope of the Order is set forth in several different sections. "Regulation" and "regulatory action," the subject of the planning and review provisions of the Order, are defined, as are exemptions from the definitions, such as formal rulemaking, rules pertaining to military or foreign affairs, and rules limited to agency organization, management, and personnel matters. (Section 3(d).) In addition, the OIRA Administrator is given the authority to exempt any other category of regulations. (Section 3(d)(4).) "Regulation" and "regulatory action" are the operative terms used throughout the Order. They are defined to include any regulatory pronouncement, regardless of form, that has, or is expected to lead to a promulgation that has the force and effect of law. Thus, certain guidance documents, directives, notices of inquiry, policy statements, and the like may be included under the

Order depending on the extent to which the agency intends to enforce their terms and conditions.

In general, the Order focusses on "significant regulatory actions," rather than all regulations or regulatory actions. This is an important distinction between this Order and its predecessor, Executive Order No. 12291. This Order makes clear, among other things, that centralized review is to be focussed on the most important regulatory actions, where OIRA's limited resources can be expected to have maximum beneficial effect. Consistent with the spirit of the primacy of agencies for regulatory decisions and the streamlining of the regulatory process, the agencies themselves are solely responsible for review of non-significant regulatory actions.

A significant regulatory action is defined to mean any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. (Section 3(f).)

The Order applies as a whole to all Federal agencies, with the exception of the independent regulatory agencies. However, the independent regulatory agencies are requested on a voluntary basis to adhere to the statement of regulatory philosophy and the regulatory principles that may be pertinent to their activities. Moreover, these independent agencies are included within the provisions relating to the planning process. (Section 4(b) and Section 4(c).)

#### Planning and Coordination

The objective of the planning process is to identify significant issues early in the course of regulatory development so that appropriate coordination can be conducted at the beginning of the process rather than at the end. Specifically, the purpose of the planning and coordinating mechanisms set up by the Order is:

[T]o provide for coordination of regulations, to maximize consultation and the resolution of potential conflicts at an early stage, to involve the public and its State, local, and tribal officials in regulatory planning, and to ensure that new or revised regulations promote the President's priorities and the principles set forth in this Executive Order. (Section 4.)

First, the Order establishes a planning cycle that begins with a meeting, convened by the Vice President, with the regulatory policy advisors and the heads of agencies to discuss priorities and to coordinate regulatory efforts to be accomplished in the upcoming year (Section 4(a)). The Order recognizes the continued utility of the "Unified Regulatory Agenda," a compilation of "all regulations under development or review," to be published as specified by the Administrator. (Section 4(b).) The Order also calls for agencies to develop a "Regulatory Plan" (Section 4(c)), a description of the "most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form in that fiscal year or thereafter." Agencies' plans are to be submitted to OIRA by June 1st of each year, and are then to be coordinated with various affected agencies and the regulatory policy advisors. After appropriate consultation and coordination, the Plan is to be published annually in the October publication of the Unified Regulatory Agenda.

Another vehicle for increased coordination and cooperation regarding regulatory affairs among agencies and between the Executive Office of the President and the agencies is the Regulatory Working Group (RWG). (Section 4(d).) The RWG—which is to meet at least quarterly—is to be chaired by the OIRA Administrator, and consist of representatives of the regulatory policy advisors and the heads of agencies determined to have significant domestic regulatory responsibility. The Order sets forth specific tasks for the RWG:

To assist agencies in identifying and analyzing important regulatory issues (including among others (1) The development of innovative regulatory techniques, (2) the methods, efficacy, and utility of comparative risk assessment in regulatory decision-making, and (3) the development of short forms and other streamlined regulatory approaches for small businesses and other entities.)

In order for agencies to implement the Order's philosophy regarding accountability, planning, and coordination, it is necessary for a very senior official with sufficient authority

to be given responsibility for these functions. The Order thus requires each agency to appoint a Regulatory Policy Officer (RPO) (Section 6(a)(2)). The RPO is to report to the agency head and is to oversee in the agency "the development of effective, innovative, and least burdensome regulations and to further the principles set forth in this Executive Order." In most cases, the RPO also serves as the agency's representative on the RWG.

To ensure improved coordination between the Government and the public, the Order also requires the OIRA Administrator to meet quarterly with representatives of State, local, and tribal governments, and to convene, from time to time, conferences with representatives of businesses, nongovernmental organizations, and the public to discuss regulatory issues of common concern. (Section 4(e).)

#### Centralized Review Process

A large part of the Order is devoted to the processes for implementing centralized regulatory review (Section 6), including a mechanism for resolving disputes that may result from such review (Section 7). In the most recent Administration, centralized review was highly controversial and vigorously attacked by critics who believed that it had been misused. Yet, few really challenge the notion that it is appropriate for the President to provide an opportunity for an appraisal—detached from the originating agency's legitimate focus on its programmatic goals—as to whether the agency's regulatory activities are consistent with and further the President's overall objectives and regulatory philosophy. Centralized review also provides an effective vehicle for ensuring that decisions made by one agency do not conflict with policies or actions taken or planned by other agencies—an increasingly important function as the decentralized government takes on increasingly complex responsibilities. And centralized review can be helpful in identifying a particular success story, or a particular mistake, by an agency that can provide important information for other agencies facing the same or similar problems.

Some of the problems with the way centralized review has been implemented in the past can be reduced if the agency rule-writers and the reviewer become engaged sooner rather than later in the regulatory process. After an agency has spent years, and substantial intellectual resources in producing a proposed regulation, it is difficult for it to be receptive and responsive to comments questioning the



fundamental premises on which the regulation is based regardless of the merits of those comments. Recognizing the benefits of advance planning and coordination in identifying and more importantly resolving major issues early in the process, Section 6 establishes a process that focusses on selectivity and early determination of what is important, or "significant."

The process begins with the agency submitting to OIRA a list of planned regulatory actions (Section 6(a)(3)(A)), indicating those the agency believes to be "significant regulatory actions", as defined in Section 3(f). OIRA then has ten working days to notify the agency that it has determined that a listed regulation is a "significant regulatory action." Those regulatory actions that both OIRA and the agency agree are not significant are not subject to review. Also, the OIRA Administrator may waive review of any regulatory action designated by the agency as significant.

For regulatory actions designated as significant, the agency is to send the draft rule and an assessment of its costs and benefits to OIRA for review. Additional and more extensive analysis is necessary if the rule is "economically significant." (A regulatory action is economically significant within the meaning of the Executive Order if it appears that it will "have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities." (Section 3(f)(1).) For an economically significant rule, the agency, unless it is prohibited by law, is to submit with the rule an assessment, including the underlying analysis, of the anticipated benefits, the anticipated costs, and of the costs and benefits of "potentially effective and reasonable feasible alternatives." (Section 6(a)(3)(C).)

Section 6 also seeks to eliminate unwarranted delays in the regulatory review process by establishing deadlines within which OIRA must complete its review. (Section 6(b)(2).) For preliminary regulatory actions prior to a Notice of Proposed Rulemaking, such as a notice of inquiry or advance notice of proposed rulemaking, OIRA must conclude review within 10 working days. For most submissions, OIRA must conclude review within 90 calendar days, except that if OIRA has previously reviewed a submission and there is no material change at its next stage, OIRA must complete its review within 45 days. In some cases extensions of review may be needed.

The Order allows the review period to be extended upon written approval of the Director of OMB or at the request of the agency head. Finally, if the OIRA Administrator returns a regulatory action to the agency for further consideration, this action is to be done in writing and is to include an explanation for the return, including the pertinent provision of the Order that is the basis for the return.

#### *Openness: Public Involvement and Disclosure*

The Order speaks not only to the relationship between the centralized reviewer and the agencies, but also to the relationship between both of them and the public. It is essential that the public be involved in the rulemaking process those benefiting from, those incidentally affected by, as well as those who might be burdened by, the proposed regulations. The public will be able to corroborate the information that the agency already has in its possession, or provide additional relevant information to the agency. The public can also provide a useful reality check on the agency's proposal.

While the Administrative Procedure Act, 5 U.S.C. § 551, *et seq.*, the agency's organic statute, and the agency's internal rules provide for public input, the Order reflects the fact that more can be done to involve the public in the rulemaking process, particularly in the early stages (before a formal notice of proposed rulemaking is issued). Specifically, the Order requires each agency to "provide the public with meaningful participation in the regulatory process," including "a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days." (Section 6(a)(1).) The Order also encourages agencies "to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking." (Section 6(a)(1).) An open and easily accessible process generally improves the basis for decision-making, increases accountability on the part of the agency, and generally enhances the prospect for acceptance of the final product by the regulated industry.

To increase the openness and accountability of the regulatory review process itself, the Order sets forth certain disclosure responsibilities for both the agencies and OIRA. After a regulatory action has been issued, the agency is to make available to the public the material that the Order requires to have been submitted to OIRA for review. The agency is also to identify for

the public the "substantive changes between the draft submitted to OIRA for review and the action subsequently announced," as well as identifying those changes that were made at the suggestion or recommendation of OIRA. (Section 6(a)(3)(E).)

OIRA too is subject to a variety of disclosure procedures. (Section 6(b)(4).) Regarding regulatory actions under review at OIRA, only the OIRA Administrator or a particular designee is to receive oral communications from persons not employed by the Executive Branch. If meetings are held with such persons, OIRA is to invite a representative from the appropriate agency to be present. Within 10 working days OIRA will forward to the agency a copy of all written communications received from persons outside the Executive Branch, as well as the names and dates of individuals involved in substantive oral communications. OIRA is also to maintain a publicly available log that includes a notation of all written communications forwarded to an agency and the dates, names of individuals, and subject matter discussed in substantive oral communications between OIRA and persons outside the Executive Branch. In addition, OIRA will make available the status of all regulatory actions under review. Finally, after publication or issuance of a regulatory action, OIRA will make available all documents exchanged between OIRA and the agency during the review.

The Order also provides a dispute resolution mechanism, in the event that the Administrator of OIRA cannot resolve a disagreement between or among agency heads or between OMB and an agency. (Section 7). In that event, the issue will be decided by the President or the Vice President acting at his behest. Resolution of an issue under this section may be requested only by the Director of OMB, the head of the issuing agency, or the head of an agency with a significant interest in the outcome. Such review will specifically not be undertaken at the request of any other persons.

#### *Review of Existing Regulations*

The Order establishes an ongoing process whereby agencies will review existing regulations (Section 5). Agencies were required to submit to OIRA by December 31, 1993, a plan under which the agency will periodically review its existing significant regulations to determine whether any such rules should be modified or eliminated. The Administrator of OIRA is directed to work with the RWG and others, State,

local and tribal governments in particular, to help pursue the review of existing regulations. The general purpose of such review is as follows:

(T) To reduce the regulatory burden on the American people, their families, their communities, their State, local, and tribal governments, and their industries; to determine whether regulations promulgated by the executive branch of the Federal Government have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President's priorities and the principles set forth in this Executive Order, within applicable law; and to otherwise improve the effectiveness of existing regulations.

\* \* \* (Section 5).

### III. The Implementation of Executive Order No. 12866

We would prefer to report that all the regulatory problems of the nation have either been resolved or are on their way to being resolved by the 6-month mark of the Executive Order. It should be no surprise, however, that this is not the case. Improving the regulatory system of the nation is tied to reforms that are being undertaken throughout the government, many initiated through the Vice President's National Performance Review. While changes are underway, most are not yet completed; this is true also for implementation of the Executive Order.

Many of the themes that run through the Order, careful planning, cooperation and team work within the Executive Branch, sound and timely analysis, focusing of resources, openness and accountability, are also being instituted across other programs of the Federal Government. In some cases, the ability of agencies to implement changes in the regulatory system depends on changes being made in other areas. For example, planning and priority setting depend on the existence within departments of offices that possess the authority to resist the natural tendency of large agencies to seek autonomy within departments. In other cases, there may be a tension between reform in one area and reform in another. Sound analysis, for example, requires highly skilled personnel and budget resources, at a time when the Federal Government is reducing personnel and constraining budgets.

To some extent, our ability to reform the regulatory process is not wholly within our control. Regulations are often

mandated by statutes, most of which attack a single problem without recognition that other problems, possibly more important problems, may be implicated by the proposed solution. Many statutes also create lengthy, often highly detailed regulatory requirements, leaving agencies with little discretion to establish reasonable tradeoffs between requirements, and in some cases driving agencies to scramble in response to the statutory (or, if they miss it, the judicially imposed) deadline of the day.

Nevertheless, we believe that we have made a very good start in implementing Executive Order No. 12866 during its first six months in operation, with many measurable improvements. The OMB Director and OIRA Administrator issued guidance to the heads of agencies regarding implementation of the Order on October 12, 1993, less than two weeks after the Order was signed. Since then, as detailed below, both OIRA and the agencies have been energetic in implementing the Order.

We must point out, however, that the start-up time for various provisions of the Order has taken longer (and in some cases a lot longer) than we anticipated. Many agencies have had to establish new oversight mechanisms to enable them to implement provisions in the Order. For example, the listing of significant and non-significant rules has proven particularly troublesome for some decentralized departments, both in terms of the internal decision-making to determine the "significance" of particular rules, and in terms of clearing those determinations with sister agencies or the Office of the Secretary (or its equivalent).

In addition, several provisions of the Order establish processes that will take time to implement or simply have not been used yet. The regulatory planning process set forth in Section 4 of the Order is on schedule, but only just now beginning. The Vice President convened the Agencies' Policy Meeting (Section 4(a)) on April 5, 1994, and guidance to the agencies on implementation of the Regulatory Plan (Section 4(c)) was issued by the OIRA Administrator immediately after the meeting. Draft Regulatory Plans are not due to OIRA until June 1st, and the first Plan will not be published until October 1994, when it will appear with the semi-annual Regulatory Agenda.

Similarly, the review of existing regulations established by Section 5 contemplated that agencies would submit programs under which they would periodically review their existing significant regulations by December 31, 1993. Several agencies, including DOT, HHS, DOE, and DOI, included as part of

their plans public notices soliciting suggestions for regulations to be reviewed. Other approaches to reviewing existing regulations have been discussed within the Regulatory Working Group, and next steps are being developed.

Finally, the provision of the Order that has not yet been implemented because it has not been used is Section 7, Resolution of Conflicts. To date, there have been no disagreements regarding implementation of the Order that have been raised to the President or Vice President for resolution.

To a large extent, the first three months of the Order, October through December 1993 were almost exclusively devoted to start-up, by both OIRA and the agencies. During January through March 1994, the changes created by the Order began to emerge, and now some are clearly visible and measurable. Start-up still goes on, however, and, as will be discussed below, it may simply be too early to tell whether the Order is working as intended.

### Cooperation and Coordination

There are a number of ways to analyze and measure the implementation of Executive Order No. 12866. Some of the most important changes that have been made, which nourish the spirit of the Order as much as carrying out its letter, are intangible and difficult to quantify. One of these is the vastly improved relationship that has developed between OIRA and the agencies.

While remnants of the mistrust and hostility that often characterized relationships between the career staffs over much of the past decade still exist, for the most part this has been replaced with a spirit of cooperation. Rule writers and rule reviewers are learning to work together as partners rather than as adversaries. Particularly good working relationships have evolved between OIRA and DOT, DOI, and Education. Substantial changes are evident with DOL and EPA. In all cases, working relationships have improved.

Differences between OMB and the agencies, including significant disagreement on issues, continue as one would expect and as is contemplated by the Order. But these differences, which are largely the product of different perspectives, are functioning for the most part as a constructive, professional tension that leads to improved regulations.

The change toward a spirit of cooperation and teamwork has occurred largely because it has been fostered by strong leadership within the Administration, including that of the President and Vice President

themselves, as well as by agency heads and managers at OMB. The Administrator of OIRA and her staff have visited many of the agencies to meet with the senior regulatory officials and entertain comments or answer questions about the Executive Order. More work needs to be done, however, so the message reaches throughout the agencies. In the end, perhaps the best antidote for any residual hostility will be several working experiences where the career staffs work together through a problem to produce a product that all agree is better for the effort.

Other serious efforts to improve communications, cooperation, and coordination have now been institutionalized.

As required by the Executive Order, each agency has designated a high level Regulatory Policy Officer (RPO) to represent directly the agency head in efforts to implement the Order and improve the regulatory process. (Section 6(a)(2).) Although departments have selected different positions to perform this role, many have designated the general counsel as the RPO. This has ensured high level agency attention to the regulatory process and efforts to reform it.

One of the primary forums for the RPOs to work together to improve the regulatory process is the Regulatory Working Group (RWG). The RWG has met three times, in November, January, and March. These meetings have been well attended by the White House advisors and the RPOs and have served as a convenient forum for discussion of issues related to the implementation of the Order in an organized and collegial manner. The meetings have allowed agencies to share techniques and solutions to common problems, and have allowed White House and agency officials to exchange views as a group on a regular basis.

The RWG has created four sub-groups to consider specific cross-cutting issues that affect all or many regulatory agencies: these include benefit-cost analysis, risk assessment, streamlining the regulatory system, and use of information technology to improve rulemaking. The sub-groups are inclusive and any agency that is interested has been invited to designate staff to participate. These sub-groups have discussed informal work plans and several are in the process of developing materials for consideration by the RWG.

An additional effort to improve working relationships between agencies and OIRA is the Regulatory Training and Exchange Program instituted by OIRA. Agencies have been encouraged to designate career staff who would

come to OIRA on a training detail to learn how regulatory review is conducted and to work on RWG matters. The purpose of the program is to provide expertise among the agency career staff in how regulatory review is conducted so that it can be incorporated into the working practices of the agency, as the Executive Order envisions. This program is still in its start-up phase, but OIRA has hosted two trainees, from USDA and DOT. Other exchange program candidates are being sought, and are expected to undergo this training during the summer and fall.

#### Openness: Public Involvement and Disclosure

Executive Order No. 12866 places special emphasis on increased openness in the rulemaking process, particularly increased public involvement earlier in the regulatory process. Agencies are instructed to "provide the public with meaningful participation in the regulatory process . . . which in most cases should include a comment period of not less than 60 days." In addition, agencies are to "explore, and where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking." (Section 6(a)(1).) Agencies are also encouraged, prior to issuing notices of proposed rulemaking, to seek the involvement of those affected by it, especially State, local, and tribal officials.

It is difficult to know how much advance consultation is taking place. However, with all but a few well justified exceptions, agencies are allowing 60 days for public comment. Regarding regulatory negotiation, on the same day that the President signed the Executive Order, he also signed a memorandum to agency heads further encouraging the use of consensual mechanisms and directing each agency, by December 31, 1993, to identify to OIRA at least one candidate for a regulatory negotiation during the upcoming year, or explain why the use of such a process would not be feasible. Agencies provided these candidates to OIRA on time, or very shortly after the deadline, and many agencies are currently undertaking regulatory negotiations. To assist with the learning process, OIRA joined with the Administrative Conference of the U.S. (ACUS) to sponsor a program for agency officials, which was held on November 29, 1993, on how to do regulatory negotiation, using expertise and materials that ACUS staff have assembled over the past decade.

As noted above, OIRA has its own responsibilities to meet with various

affected entities. OIRA has held two conferences with representatives of State, local, and tribal governments one in December 1993, the second in March 1994. The first conference, chaired by the OIRA Administrator and attended by about 100 persons, consisted of three panel discussions: an overview of the regulatory partnership; regulatory burdens and how they may be reduced; and involving all affected entities in regulatory development. The panels and audience consisted of representatives from State, county, town, and tribal governments; academics; association representatives, for example from the National Association of Counties, the National Governors' Association, the National Association of Towns and Townships, the National Association of American Indians, and the Advisory Commission on Intergovernmental Relations; and agency intergovernmental affairs office representatives.

The second conference, also chaired by the OIRA Administrator, was a working session devoted to discussion of consultations between the Federal government and State, local, and tribal officials regarding unfunded nonstatutory mandates. This session brought together at one table general counsels from several major regulatory agencies and various State, local, and tribal governmental officials to discuss how to improve the consultative process called for in Executive Order No. 12875, "Enhancing the Intergovernmental Partnership".

These conferences are the beginning of a significant and continuing effort by this Administration to ensure that more effective working relationships among the Federal, State, local, and tribal governments are institutionalized. A third conference is tentatively scheduled for early June. We have asked representatives of the major State, local, and tribal associations for suggested topics or formats for this and other conferences to be scheduled on a regular basis.

OIRA has also taken steps to improve the participation of the small business community in the rulemaking process. OIRA joined the Small Business Administration (SBA) to sponsor a Small Business Forum on Regulatory Reform in March 1994 to discuss how the regulatory process can better address the special needs of small businesses. The Forum, chaired by the OIRA Administrator and the Administrator of the SBA, brought together high level officials from regulatory agencies that significantly affect small businesses—EPA, DOT, IRS, DOL, DOJ, and FDA—to listen to small business owners



discuss their concerns regarding Federal regulations. This Forum was followed by work session meetings focussed on five industry sectors—chemical and metals; food processing; transportation and trucking; restaurants; and environmental, recycling, and waste disposal—that have been attended by both relevant agency officials and small business representatives. A second conference, to discuss the results of these work sessions, will be scheduled later this summer.

While the regulatory review process conducted by OIRA cannot displace the agencies' responsibilities to seek and accommodate public input in rulemaking, OIRA is charged with conducting its work so as to "ensure greater openness, accessibility, and accountability in the regulatory review process." (Section 6(b)(4).) On July 1, 1993, as one of her first actions, the OIRA Administrator began making available a daily list of draft agency regulations under review at OIRA. This was done in order to remove the stigma of secrecy that had previously characterized regulatory review, and to make the review process more transparent. Now, the fact that a rule is under review at OIRA, or "pending," is public information available to anyone who seeks it.

The completion of review is also made public. On the pending list, the date of completion of review for any regulation pending that month is indicated. Lists and statistics for each month are compiled and made available by the tenth day of the following month. This information includes a list of all rules on which review was concluded the previous month, showing agency, title, an identification number, date received, date review completed, type of rule (e.g., proposal, final, etc.), and OIRA action taken (e.g. found consistent with the Order without change, with change; withdrawn; returned to agency; etc.). In addition, there is a list of all economically significant rules reviewed. Finally, this monthly compilation includes aggregate statistics on reviews for the month and for the calendar year, including the number of reviews by agency, OIRA action taken, and average review time.

As provided for in the Executive Order, meetings and telephone calls with persons outside the Executive Branch on regulations under review are now logged, and these logs are made publicly available. Entries for meetings include the date, the attendees, and the subject matter discussed. An agency representative is invited and almost always attends such meetings. Any written materials provided by the

outside person(s) are made publicly available, and, if an agency representative is not in attendance, are provided to the agency.

The OIRA meetings log contains 36 entries, for meetings that occurred between July 19, 1993, and March 31, 1994. In all but two, the OIRA Administrator chaired the meetings; in these two, other officials in the Executive Office of the President acted as chair. An agency representative attended all but four meetings. Usually the meetings were with persons outside the Federal Government, but in several instances the attendees included Congressional representatives. Most of the meetings were devoted to EPA regulations, 30 of the 36. The other meetings concerned a DOC/NOAA rule and several FDA and USDA food safety regulatory actions.

Any material sent to OIRA on rules being reviewed from anyone outside the Executive Branch is kept in a public file. In addition, if the material is not merely a copy of documents already sent to the agency, a copy is forwarded to the agency. Finally, documents exchanged between OIRA and the agency during the review, including the draft rule submitted for review and changed pages, are made available to anyone requesting them after the rule has been issued (or, if it is not issued, after the agency has announced its decision not to issue the rule).

These various disclosure procedures are working well and have helped restore the integrity of the regulatory review process. Communications with outsiders are controlled and disclosed, but apparently this has not had the result of discouraging such communications. Also, the results of the review process itself are disclosed, making OIRA clearly accountable for its actions.

#### Regulatory Review Statistics

The statistics maintained by OIRA of the regulatory review process provide another means of measuring the implementation of the Executive Order. Indeed, these statistics respond directly to most of the questions raised in the President's September 30, 1993, memorandum to the OIRA Administrator. In this memorandum, he directed the Administrator:

To monitor your review activities over the next six months and, at the end of this period, to prepare a report on your activities. This report shall include a list of the regulatory actions reviewed by OIRA, specifying the issuing agency; the nature of the regulatory action \* \* \* ; whether the agency or OIRA identified the reviewed regulatory action as

"significant," within the meaning of the order; and the time dedicated to the review, including whether there were any extensions of the time periods set forth in the order, and if so, the reason for such extensions.

OIRA received and reviewed 578 regulatory actions from October 1, 1993, through March 31, 1994. Appendix A lists these rules, indicating the originating department and/or agency, the review time in days, the nature of the regulatory action (e.g., Proposed Rule, Final Rule, etc.), the rules designated significant by the agency and those designated by OIRA, the rules for which review was extended, and the title of the rule. Table 1 summarizes information about these rules by agency, including the number of rules and average review time for rules in the "economically significant" and "other than economically significant" categories. It also indicates the OIRA action taken by agency.<sup>1</sup>

Table 1 indicates that of the 578 rules reviewed, 63 (11%) were economically significant (or "mejor," a term from Executive Order 12291 that continued to be used until about the beginning of January). The average review time for all the rules was 26 days, well below the 90-day limit established by Executive Order No. 12866. The 10 agencies with the highest volume of submissions were, in order: HHS (126), USDA (94), EPA (52), DOT (44), DOC (42), DOI (34), Education (25), HUD (25), VA (21), and OPM (17). For about 60% of the submissions, review was completed without change to the rule. In 30% of the cases, review was completed with change. 4.5% of the rules were withdrawn by the agency; 2% were returned because they were sent improperly; in about 3% of the cases, mostly EPA rules, review was not concluded but was ended because of a statutory or judicial deadline.

These statistics are effected by the fact (discussed later) that during the start-up period, during which many non-significant rules continued to be sent to OIRA for review. Once the process is fully implemented and agencies submit

<sup>1</sup> On October 1, 1993, OIRA also had 175 rules under review that had been submitted under Executive Order 12291. Table 2 summarizes the data on these rules. On average, these rules were reviewed in 75 days. Review was concluded on the last of these pre-Executive Order No. 12866 rules on 1/13/94.

Also, on March 31st, 58 rules that had been submitted between October 1st and March 31st were still under review. Table 3 summarizes the pertinent data on these rules. 45 rules (or 60%), had been under review for under 30 days; 66 (or 97%), had been under review less than 90 days. Three (or 3%), had been under review over 90 days, and had been extended.

only significant rules to OIRA for review, the total number of rules is likely to decrease, as will the percentage of rules for which review is concluded without change. At the same time, as only the more important rules become the focus of OIRA's review, average review time is likely to increase. We will be watching these indicators closely during the coming year.

Of the 578 individual rules listed in Appendix A, three rules were extended beyond the 90-day limit, all at the request of the agency to permit interagency coordination to be completed. Regarding the designation of rules as "significant," the list indicates which rules were designated significant by the agency, and which were designated significant by OMB. Of the 578 rules reviewed, a total of 238 or 41% were designated significant in accordance with Section 6(a)(3)(A). Of those designated significant, 166 or 70% were so designated by the agency, while 72 or 30% were designated significant by OMB.

#### Listing Process

As Appendix A indicates, many of the rules reviewed were not designated either "significant" or "not significant." This is because virtually all agencies needed the first two to three months of the Order for start-up activities, and did not have in place their listing processes until the second half of the six-month period under review. The process was smoother for agencies that either already had or created offices to perform the central management function necessary for the listing process to succeed. DOT, for example, has had in place for many years a central regulatory review office in its Office of the General Counsel, whose function is to coordinate and review the DOT sub-agencies' rulemaking on behalf of the Secretary. In other instances, offices have been established to perform these functions by Clinton appointees. The Secretary of the Department of the Interior, for example, created an Office of Regulatory Affairs whose director reports to the Secretary and Chief of Staff and whose job it is to organize, monitor, and manage the Department's rulemaking activities. The Department of Education also addressed the need for centralized responsibility, assigning this function to its General Counsel, who brought on board a Deputy specifically charged with regulatory responsibilities. These agencies have done an excellent job instituting the listing procedures.

In other instances, however, it has proven difficult to create a centralized, departmental function capable of: collecting information from agencies

within the department on the status of regulations; coordinating a departmental decision on significance; and managing the submission of the result to OMB and the discussion with OMB to reach agreement on the proper designation. Even now, after six months of experience, some agencies have still been unable to submit a single list to OIRA designating rules as significant or non-significant. These agencies generally continue to submit all rules to OMB for review, telling us that it is easier and quicker for them to do so than to go through the process of designating rules as significant or non-significant even though they know that the majority of their rules are non-significant and would therefore not need to be reviewed.

These agencies are examples where internal agency coordination needs to be improved. OIRA does not want to review non-significant rules; more importantly, it is only when agencies are able to designate rules as non-significant well in advance that the benefits of this system in streamlining the regulatory processes will be realized. In the meantime, OIRA is working with agencies to process all the rules that are submitted, accommodating as much as possible the difficulties agencies are experiencing starting up their systems.

OIRA initially envisioned that agencies would send lists designating rules significant or non-significant every 30 or 60 days. It is now clear that for some agencies, lists may be needed more often; for others, less often; and for some, at irregular intervals. The process should remain informal and flexible to respond to differences among the agencies and to changing circumstances within some agencies. For example, DOC's National Marine Fisheries Service must sometimes modify Federal fishery management plans on only several weeks, and indeed sometimes on several days, notice. Speed in the listing process is therefore critical. Also, in some instances, agencies have preferred to submit informal drafts of lists to OMB so that discussions can take place and additional information be exchanged before the lists are finalized. We do not want to discourage any opportunities for early exchanges of information, and therefore it has worked with the agencies to sort through the various informal lists they are able to provide.

In total, OIRA has received lists designating 1,624 rules as significant or non-significant. (These rules would not all be listed in Appendix A because, if non-significant, they would not have been submitted for review, and if significant, they may or may not have

been ready to be submitted for review within the six-month period covered by this report.) Of the 1,624 regulatory actions, agencies designated, and OIRA agreed, that 1047, or 64% were non-significant; 316, or 19% were designated by the agency as, and OIRA agreed they were, significant; and the remaining 261, or 16%, were designated significant by OIRA. Stated another way, the agency and OIRA agreed with the initial designation for 83% of the cases; in only 16% was there a difference of view.

These aggregate data mask the fact that for most agencies the number of instances where there is an initial difference of opinion between the agency and OIRA as to significance decreases as the agency gains experience with the process. In some cases it is simply a function of the agencies not knowing how much information to provide to enable OIRA to agree with the agency designation. In all cases, differences have diminished with time as the agencies and OMB discuss the reasons for the different perspectives and develop an understanding and agreement on the definition of significance.

OIRA's experience implementing this listing provision of the Executive Order has provided some valuable lessons. In some cases, the difficulties described above are symptomatic of agency processes that are broken and need to be fixed. But it is also true that the Executive Branch is characterized by great variety in agency structures, cultures, statutory mandates, and missions. As a consequence, the Executive Order must be flexible enough to accommodate such variety and not seek to impose rigid constraints that may be counterproductive.

We believe that so far, the listing system that has been implemented contains both discipline and flexibility. Both OIRA staff and agency staff have worked to accommodate each other's needs. The listing process is serving to focus OIRA efforts on significant rules, promote streamlining in the rulemaking process, and establish accountability in agencies, without creating unnecessary and burdensome additional structures.

#### Selectivity

One of the purposes of the Executive Order was to reduce the number of rules submitted to OIRA for review, thereby streamlining the rulemaking process for the agencies and allowing OIRA to focus its limited resources on the more important rules. The start-up issues discussed above have clouded to some extent a clear measure of the changes that have occurred in regulatory review since the Executive Order was signed.



Nevertheless, the intended reduction in the number of rules reviewed under the Order is clearly demonstrated in the statistics.

Part of the reduction is attributable to the implementation of OIRA's authority to exempt both specific agencies and categories of regulations from centralized review. In guidance issued to agencies on October 12, 1993, the OIRA Administrator exempted 31 smaller agencies and 35 categories of regulation so that OIRA review could be more usefully focussed. (Lists of these exemptions are included with the October 12, 1993, guidance from the OMB Director and OIRA Administrator on implementation of the Order, attached. These lists have been updated to exempt four additional agencies and approximately 30 additional categories of regulations.)

Overall, the 578 rules received and reviewed by OIRA for the six-month period is approximately half what it was in previous years. Figure A indicates the clear decline in the number of rules OIRA received for review, compared to the average monthly receipts for the preceding nine months of 1993 (which is comparable to that of previous years). The number of rules received for OIRA review decreased from an average of about 180 per month from January through September 1993 (the monthly average for the years 1989 through 1992 was 192), to well under 100 for January through March 1994. (Monthly figures will vary depending on regulatory activity at agencies. Figure A shows a steady decline from October 1993 through February 1994 and an increase for March. April's figures are between those of February and March.)

The number of rules under review at any given time has also shown a significant decline. On July 1, 1993, when OIRA began its disclosure of rules under review, 254 regulations were listed as pending. On September 30, when the President signed Executive Order No. 12866, 175 regulatory actions were pending review at OIRA. On March 31, 1993, 68 regulatory actions were pending. All these figures re-emphasize the obvious, that OIRA is reviewing far fewer rules than in the past, exactly as envisioned by the Executive Order.

#### Time Limits

The Executive Order establishes strict time limits on OIRA review, in most cases 90 days. The purpose of such limits is to balance the need for adequate time to conduct review with the need to streamline the regulatory process and prevent unwarranted delay. OIRA has made a concerted effort to

meet not only the letter of this requirement, but its spirit as well, and this goal of the Order is clearly being accomplished.

As can be seen from both Table I and Appendix A, the average review times for the rules submitted during the first six months of the Order is only 26 days. This is a reduction in the average annual review time for the past five years: 1989—29 days; 1990—28 days; 1991—29 days; 1992—39 days; 1993—44 days. (The average times were particularly high during 1992 and 1993 because of, respectively, the Regulatory Moratorium instituted by President Bush and the effect of the transition to the Clinton Administration, when many agencies were without political appointees for a significant portion of 1993.)

Notwithstanding OIRA's commitment to speed up the review process, it is likely that the average review time will go up in the future. As non-significant rules, which in the past had generally been reviewed quickly and thus helped keep average review times down, are removed from the review process, and only significant rules submitted and reviewed by OIRA, the time necessary to complete such review may increase. To some extent, however, average review time is no longer as useful a measure as it was when there were no meaningful limits on review. Since all rules, except the small percentage specifically extended, must be reviewed within 90 days, it is compliance with that deadline that is most important and is therefore discussed in detail below. Nevertheless, average review time will continue to be a measure carefully watched by OIRA in the coming year.

A quick look at Appendix A reveals that most reviews were completed in under 30 days. This may be as a result of OIRA's still receiving non-significant rules, or its receiving some rules on the eve of statutory or judicial deadlines, or because OIRA and agency staffs have consulted earlier in the process and few issues remain by the time for formal submission. Of the 578, 408 or 71% were reviewed in under 30 days. 512 or 89% were reviewed in under 60 days. Review took greater than 60 days for only 66 or 11% of the 578. The OIRA Administrator has instituted an internal management system that flags for her attention all rules still under review at their 80th day. This has ensured that submissions do not languish on staff desks, but are raised to the appropriate level well before the 90th day.

Appendix A and Table I also show how review times compare across different agencies. For some agencies, the review time is skewed because of

lengthy reviews of only a small number of rules. For example, the average time for review for OMB of 108 days was for a single rule, which was extended. NSF's average of 84 days was for three rules; FFIEC's average of 70 days was for a single rule. For the higher volume regulatory agencies, review time averages ranged from 15 days for DOT's 44 rules to 40 days for VA's 21 rules. Others fell in between: HHS—27 days (for 126 rules); USDA—19 days (for 94 rules); EPA—35 days (for 52 rules); DOC—16 days (for 42 rules); DOI—23 days (for 34 rules); Ed—29 days (for 25 rules); HUD—33 days (for 25 rules); OPM—19 days (for 17 rules).

The Order permits the time for review to be extended at the request of the agency head, or by the Director of OMB for 30 days. Appendix A indicates that of the 578 rules received and reviewed between October and March, only three were extended. These were: DOI's Wild Bird Conservation Act rule, which was under review for 107 days; OMB's Cost Accounting Standards Board Regulations, under review for 108 days; and DOD's Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) rule, under review for 99 days. Each of these rules was extended at the request of the originating agency. Wild Birds was extended to permit the completion of interagency coordination between DOI, DOJ, State and USTR. Cost Accounting Standards was extended to allow OIRA staff to meet with the Cost Accounting Standards Board at the Board's request. DOD's CHAMPUS rule was extended to ensure coordination of the rule with the regulatory programs of other health care agencies. In all these cases, extension was used to permit completion of reviews that were in fact concluded in less than three weeks after the extension was requested.

As of March 31st, two additional rules had been extended and were still under review: USDA's Revisions of Farmland Protection Policy Act (received November 9, 1993), and EPA's Lender Liability for Underground Storage Tanks (received December 20, 1993). Also, nine rules that were submitted before the Executive Order was signed, but for which review was concluded after October 1, 1993, were extended after they had been under review for 90 days in an effort to comply with the spirit of the new Order.<sup>2</sup>

<sup>2</sup> These rules were: USDA's Export Bonus Program (review concluded 12/7/93); DOD's Prompt Payment Act (review concluded 12/18/93); DOC's Natural Resource Damage Assessment rule (review concluded 12/23/93); HHS's Payment of Preemption Service, Medicare Program (review

Continued

Overall, OIRA's experience during the first six months with the review time limits show them to be working well.

#### IV. Issues for Further Consideration

In his September 30, 1993, memorandum, the President requested that the Administrator of OIRA "identify any provisions of the order that, based on your experience or on comments from interested persons, warrant reconsideration . . ." There are a number of provisions that qualify, although it is too early to say whether the problems lie with the terms of the Executive Order, with its implementation, or some combination of the two. As discussed above, in many cases start-up activities implementing certain provisions of the Order are still in progress. The process of listing rules as significant or non-significant, for example, while well underway at most agencies is nevertheless still in its formative stages at many other agencies. As a result, we are not now able to judge the effectiveness of this approach in achieving the objectives of the Order.

By the same token, we do not know if agencies are giving to non-significant regulatory actions the review and care that they deserve. It was anticipated that, because there would be no OIRA review, agencies themselves would have to ensure that non-significant rules, as well as significant regulations, meet the principles of the Order. Some agencies have told OIRA that they are fulfilling this responsibility. OIRA has no independent basis for confirming or denying these reports. With time, however, there should be sufficient information to enable informed judgment on the issue. With time, OIRA should also be able to better evaluate the effects of earlier communication between OIRA and agency staffs and more selective review to ensure that significant regulations adhere to the principles of the Order. And, as noted above, additional time is needed to evaluate the planning process and the process for review of existing regulations.

While it is premature to recommend specific revisions to the Executive Order, we have enough experience to suggest some areas that are likely to require further consideration.

concluded 12/23/93); HHS's Revisions to Freedom of Information Regulations, Medicare and Medicaid (withdrawn 12/09/93); HHS's Medicare Coverage and Payment of Clinical Psychologists (review concluded 12/15/93); HHS's Medicare Secondary Payment (review concluded 1/13/94); DOE's Amendment to Workplace Substance Abuse Programs (review concluded 12/3/93); and DOE's Workplace Substance Abuse Programs at DOE Sites (review concluded 12/3/93).

#### Review Time Limits

One such issue is the 90-day review time limit (Section 6(b)(2)(B).) In general, we have found the discipline of this limit useful and fair. Along with the disclosure procedures, the time limits have helped remove the stigma of secrecy and delay that have characterized regulatory review in the past. As shown in Appendix A, only a small percentage of the rules submitted for review are extended.

There are two types of situations, however, where the balance between adequate review and the limits on review time is problematic. First, OIRA's experience is that interagency coordination can sometimes be unexpectedly lengthy. In the case of the USDA Farmland Protection rule, for example, coordination among multiple agencies, in this case USDA, DOT, HUD, Treasury, and GSA, has required the resolution of significant issues at the highest levels in major regulatory departments. As a practical matter, it takes time to arrange meetings, define and analyze issues, circulate and coordinate exchanges between the agencies, and negotiate solutions. It has proven extremely difficult to keep this process moving to resolution.

The second situation is where the agency and OIRA agree that additional analysis is necessary to meet the requirements of the Order. In some instances, where issues are highly technical—legally, mechanically, or economically—such analysis can take months to complete. If this is the case, the rule is technically still under review at OIRA, although in fact no review can be conducted—either by OIRA or the agency—until the further data and analysis are generated. In such cases, the time limits on review serve to discourage rather than encourage efforts to develop the most effective, minimally burdensome regulation.

The current mechanism to deal with such circumstances is the provision for extension of review by either the Director or the agency head. (Section 6(b)(2)(C).) While this provision has functioned to keep some rules under review that might otherwise have been returned to the agency, it gives the misleading impression that OIRA is reviewing the rule when in fact the originating agency, or an affected agency, is engaged in further analysis or coordination or even in some cases simply making changes that have already been agreed to in principle by policymakers.

There is another area where the 90-day limit may not be appropriate—namely, an economically significant

regulatory action, which may have taken several years to develop to the proposed stage and which arrives at OIRA with several hundred pages of detailed analysis. Even if the OIRA and agency staffs have conferred during the developmental stages, it is very difficult to review all of the materials presented, and particularly to consider not only what is presented, but also what is not (which often is equally, if not more, important), within the 90-day limit under the best of circumstances (e.g., no intervening statutory or judicial deadlines or agency requests for expedited consideration of high priority agency initiatives).

At the other extreme are those instances where review is triggered by section 3(f)(4)—that is, a rule raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Order. Here, if there has been advance consultation as there should be, and other agencies are not affected, OIRA may need very little, if any, time to conclude review.

By contrast, OIRA is often given a few days for review—even though substantially more time is necessary—because there is an imminent statutory and/or judicial deadline. Some agencies, notably EPA, but also HHS, DOL, DOI and others, often must develop regulations under severe time constraints set in statutes or arising from litigation resulting from missed statutory deadlines. In such cases, the discretion of the agency is often severely limited, both in terms of time to conduct adequate analysis and discretion to devise flexible, innovative, end-cost-effective solutions to difficult problems. In some of these cases, OIRA has received rules for review only days before a deadline; in fact, in some cases, the agency managers themselves have only a few days to deal with deadline cases.

While this is a serious problem, it may be beyond our ability to remedy through the Executive Order. It is our view that highly prescriptive legislation, including dictating time lines for promulgating regulations, has contributed to a regulatory system that is sometimes unmanageable or is driven by plaintiffs rather than by a rational planning process that directs the government's limited resources to the most important problems and the most cost-effective solutions. However, the solution, if there is one, clearly invites the Legislative Branch and extends beyond the issues covered in this report.

A different problem, but one related to review time limits, is the question of when the clock should start. OIRA has

encouraged agencies to consult early in the development of a regulatory action. This brings the perspectives of both the reviewer and the agency to bear on the rule early in the process, informing the regulatory development and permitting early identification and resolution of any major policy differences. Adequate front-end involvement is especially important when statutory or judicial deadlines dictate a rapid pace in the development of the rule. The starting of the clock with the submission of a relatively complete formal draft does not encourage such advance consultation. On the other hand, some have expressed concern that with such advance consultation, the measurement of review time beginning with the submission of a relatively formal draft does not accurately state (indeed, may substantially understate) the time that OIRA has in fact spent reviewing (in some sense) the regulatory action.

#### *Definition of "Significant"*

Another area where further monitoring and additional thought is warranted involves the term "significant," which is the trigger for determining whether or not there will be OIRA review. The definition of "significant" is not, apparently, self-executing, and argument over its meaning has been at least partly responsible for the long start-up time in implementing the listing process. In some cases, debate takes place within the agency as to whether or not a rule is significant. In some of those same cases, and in others, the debate takes place between OMB and the agency, typically with OMB thinking that a regulatory action which the agency initially thinks is non-significant is, in OMB's view, significant.

To some extent these debates are part of the initial adjustment period as the Order is implemented; some reflect residual mistrust from the previous regulatory review system; end, some reflect the natural tension between the agency responsible for the regulation and a reviewing entity. But some may reflect the lack of precision (deliberate at the time of drafting) in the definition set forth in the Executive Order.

The uncertainty centers in particular around two of the four criteria that define "significant regulatory action"—the first and the fourth. The first criterion defines what has become known as an "economically significant" rule. (Section 3(f)(1).) Although the initial clause of the criterion—a \$100 million annual effect on the economy—is clear, the remainder is not as easily understood. What does it mean to "adversely affect in a material way the

economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities"? Similarly, looking at the fourth criterion, what are "novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order"? Some have read it very narrowly; others have read it to include everything. While it is too early to suggest specific changes to the definition, we will be monitoring it to see if further clarification is required.

#### *Identification of Changes Made During Review*

Another area that may warrant further consideration are sections 6(a)(3)(E) (ii) and (iii), which require the agency to identify the substantive changes made in a regulatory action during OIRA review, and to identify those changes made at the suggestion or recommendation of OIRA. These provisions are intended to make the results of OIRA review transparent to the public. Some agencies have told us they are identifying such changes, and while we have not conducted a survey, we have no reason to think that all are not complying with the terms of the Order.

From our perspective, however, changes that result from regulatory review are the product of collegial discussions, involving not only OIRA and the agency, but frequently other White House Offices—such as OVP, DPC, NEC, CEA, OEP, OSTP—and other agencies as well (including at times, other sister agencies in the same department as the originating agency). After an extended process, it is not clear that identifying changes made at the suggestion of OIRA is accurate (if the only choice is OIRA suggestions or agency proposals) or meaningful (if OIRA suggestions are only those suggestions originating at OIRA rather than at another agency). We expect to explore this subject with the agencies and see if any further guidance is necessary or desirable.

#### *Intergovernmental Relations*

There are two areas that are touched on in the Executive Order where perhaps more should be done. The first involves Executive Order No. 12875. It provides, among other things, that Federal agencies that impose nonstatutory, unfunded mandates on State, local, or tribal government either: (1) ensure that funds necessary to pay the costs of compliance are provided by the Federal Government, or (2) describe the extent of the agency's prior

consultations with affected units of government, the nature of their concerns, any written submissions from them, and the agency's position supporting the need to issue the regulation containing the mandate. The purpose of this provision is, in part, to improve communications between the agencies and State, local, and tribal officials, particularly those responsible for funding the programs, and to establish a meaningful working relationship between them where none may now exist. This is very much a part of the philosophy of Executive Order No. 12866, and OMB has provided guidance to the agencies that regulatory actions that contain an unfunded mandate should be submitted to OIRA for review under Executive Order No. 12866. Further clarification of OIRA's role in this regard could be considered.

#### *Small Business Concerns*

The second area involves the burdens of regulation on small businesses. Concerns voiced by the small business community have led to a variety of proposals to increase the focus of regulators on the unique problems of small businesses, and in particular the agencies' compliance (or lack of compliance) with the Regulatory Flexibility Act, 5 U.S.C. 601. One suggestion is to have OIRA and the Small Business Administration (SBA) coordinate review of agency rules to assure that the agencies prepare and use high quality regulatory flexibility analyses when it would be appropriate to do so. SBA could notify OIRA of any concerns it has with an agency's regulatory flexibility analysis within a certain time after publication (e.g., 20 days) of a notice of proposed rulemaking, and OIRA could be authorized to direct the agency to issue a supplemental notice raising regulatory flexibility analysis concerns or announcing the intent to prepare a regulatory flexibility analysis by a date certain. Other forms of collaboration are also possible to encourage better interagency coordination and compliance with existing law.

#### *Post Hoc Evaluation of Rules*

Finally, regulations are developed based on estimates of behavior and events in the future. Even the best of such predictions can turn out to be wrong. After a regulation has been issued, however, there is little, if any, effort made to review estimates and analyses to see what was right and what was wrong, both to change the current rule to make it more effective and to learn how to do better analyses for future rules. Agencies with increasingly



limited staffs and new mandates to meet have little incentive for such exercises, although they could be critical to an efficient and effective rulemaking program.

It is possible that the appropriate incentives could be provided by requiring, at least in selected cases, that agencies manage their regulations toward results. That is, a rule could be written with specific goals, initial baselines against which to measure achievement of these goals, and an evaluation plan, including comment by affected parties with an expectation that based on such input and analysis the rule would be modified to improve its effectiveness and efficiency. If so, review of an existing regulation would become part of its development rather than an after-the-fact exercise.

#### Conclusion

The importance of regulations in our society makes it imperative that the process by which they are developed and reviewed be characterized by integrity and accountability. Regrettably, this Administration did not inherit such a process from the prior Administration. On the contrary, that process was severely criticized for delay, uncertainty, favoritism, and secrecy. Significant improvements have been made with the implementation of Executive Order No. 12866. While it is still too early to judge the effects of the new Order, the regulatory process has been made more principled, professional, and productive. The Executive Office of the President is working in concert with the agencies and listening to the public in order to solve problems, not pretending they do not exist.

The American people deserve a regulatory system that improves their health, safety, and economic well-being without imposing unacceptable or unreasonable costs on society. The regulatory system being established by Executive Order No. 12866 demands quality, efficiency, and accountability, and is well on its way to improving the functioning of government, the economy and, most importantly, the quality of life for the American people.

#### List of Attachments

1. Executive Order No. 12866 (This Executive Order does not appear in this document. See 58 FR 51735; October 4, 1993).
2. Presidential Memorandum for the Administrator of OIRA dated September 30, 1993. (This Presidential memorandum does not appear in this document. Copies are

available from the EOP Publications Office at 202-395-7332.)

3. Guidance from the Administrator of OIRA for Implementing E.O. 12866.
4. Appendix A—Executive Order 12866 Reviews October 1, 1993–March 31, 1994; Received Since October 1, 1993
5. Table 1—Executive Order Reviews October 1, 1993–March 31, 1994; Received After October 1, 1993
6. Table 2—Executive Order Reviews October 1, 1993–March 31, 1994; Received Prior to October 1, 1993
7. Table 3—Executive Order Reviews Pending on April 1, 1994
8. Figure A—Executive Order 12866 Receipts From Agencies October 12, 1993.

#### Memorandum for Heads of Executive Departments and Agencies, and Independent Regulatory Agencies

From: Sally Katzen, Administrator, Office of Information and Regulatory Affairs  
Subject: Guidance for Implementing E.O. 12866

The President issued Executive Order No. 12866, "Regulatory Planning and Review," on September 30, 1993 (58 Fed. Reg. 51735 (October 4, 1993)).<sup>1</sup> It calls upon Federal agencies and the Office of Information and Regulatory Affairs (OIRA) to carry out specific actions designed to streamline and make more efficient the regulatory process. This memorandum provides guidance on a number of the provisions of the new Order. Undoubtedly, with experience, additional questions will be raised, and we will attempt to respond promptly as they arise.

#### 1. Coverage

The Order as a whole applies to all Federal agencies, with the exception of the independent regulatory agencies (Sec. 3(b)). The independent regulatory agencies are included in provisions concerning the "Unified Regulatory Agenda" (Sec. 4(b)) and "The Regulatory Plan" (Sec. 4(c)). However, while the President's "Statement of Regulatory Philosophy and Principles" (Sec. 1) applies by its terms only to those agencies that are not independent, the independent regulatory agencies are requested on a voluntary basis to adhere to the provisions that may be pertinent to their activities.

In addition, the Order states that the OIRA Administrator may exempt agencies otherwise covered by the Order. Appendix A is a first cut of those agencies that have few, if any, significant rulemaking proceedings each year; effective immediately, these

agencies are exempt from the scope of the Order.<sup>2</sup> Like the independent agencies, those agencies listed in Appendix A are requested to adhere voluntarily to the relevant provisions of the Order, particularly the President's "Statement of Regulatory Philosophy and Principles" (Sec. 1).

#### 2. Designation of Regulatory Policy Officer

The Order directs each agency head to designate a Regulatory Policy Officer "who shall report to the agency head" (Sec. 6(a)(2)). This Regulatory Policy Officer is to be involved at each stage of the regulatory process to foster the development of effective, innovative, and least burdensome regulations. Because the Regulatory Policy Officer will in most circumstances serve as the agency representative to the Regulatory Working Group (see below), please provide us with the name, mailing address, and telephone and fax numbers of your designee as soon as possible.

#### 3. Regulatory Working Group

The Order directs the OIRA Administrator to convene a Regulatory Working Group consisting, in part, of the representatives of the heads of each agency having significant domestic regulatory responsibility (Sec. 4(d)).

Again, we have made a first cut of a list of those agencies which should be members of the Regulatory Working Group, which is attached as Appendix B. Some of the Departments that have separate regulatory components may qualify for multiple representatives. Please notify us if you believe that your Department should have more than one representative. In suggesting additional representatives, please identify these persons and provide us with their mailing addresses, and telephone and fax numbers.

The Administrator is to convene the first meeting of the Regulatory Working Group within 30 days. It is therefore essential that we have your response as soon as possible.

#### 4. Regulatory Planning Mechanism

The Order emphasizes planning as a way of identifying significant issues early in the process so that whatever coordination or collaboration is appropriate can be achieved at the beginning of the regulatory development process rather than at the end (Sec. 4).

<sup>2</sup> To assure that the purposes of the Executive Order are carried out, we may ask these agencies to review particular significant regulatory actions of which we become aware. These Agencies should advise OIRA if they believe that a particular rule warrants centralized review.

<sup>1</sup> This Order replaces E.O. 12291 and E.O. 12498.

There are two specific planning documents discussed in the Order. The first, the semiannual Unified Regulatory Agenda (Sec. 4(b)), is on schedule and will be published before the end of October. Traditionally, all agencies participate, describing briefly the regulations under development. The Order does not call for any change in either the scope or format of this document.

The second planning document is the annual Regulatory Plan (Sec. 4(c)), which is to be published in October as part of the Unified Regulatory Agenda. The Regulatory Plan seeks to capture the most important significant regulations. In advance of agencies drafting their Regulatory Plans, the Vice President will meet with agency heads to seek a common understanding of regulatory priorities and to coordinate regulatory efforts to be accomplished in the upcoming year (Sec. 4(a)). The Vice President will convene the first meeting in early 1994. Following that meeting, we will provide appropriate guidance on the scope and structure of the submissions for the 1994 Regulatory Plan.

As you may recall, OMB had asked in OMB Bulletin No. 93-13 (May 13, 1993) that certain agencies prepare a draft 1993 Regulatory Program under the then applicable Executive Order No. 12498. Many agencies sent in some or all of their proposed programs. Other agencies informed us that they wanted to wait for the confirmation of political appointees or the issuance of the new Executive Order. While there is now insufficient time for all of the steps necessary to prepare a formal regulatory plan for this year, the materials we have received will be useful in preparing for the meeting with the Vice President and our other coordination efforts. Those agencies that have already drafted but not submitted materials, as well as those who wish to augment what we have already received, are encouraged to send these materials to OIRA.

#### 5. Review of Existing Regulations

The Order directs each agency to create a program under which it will periodically review its existing significant regulations to determine whether any should be modified or eliminated to make the agency's regulatory program more effective, less burdensome, and in greater alignment with the President's priorities and regulatory principles (Sec. 5). Specifically, within 90 days, agencies are to submit to the OIRA Administrator a program establishing, consistent with the agency's resources and regulatory priorities, the procedures for carrying

out a periodic review of existing significant regulations and identifying any legislative mandates that may merit enactment, amendment, or rescission (Sec. 5(a)).

We are aware that past Administrations have required agencies to undertake similar review efforts. Some of these have been so broad in scope that necessary analytic focus has been diffused, or needed follow-up has not occurred. This current effort should be more productive because it focuses only on significant regulations and the legislation that mandates them, and because we will be looking at groups of regulations across agencies with the help of the Vice President and the White House Regulatory Advisers, as well as the public.

Pursuant to the Order, we are asking each agency to send to the OIRA Administrator within 90 days a workplan which identifies who and which office within the agency will be responsible for assuring that periodic reviews take place; the criteria to be used for selecting targets of review; the kinds of public involvement, data collection, economic and other analysis, and follow-up evaluation that are planned; the timetables to be applied; and, to the extent then known, the targets selected. As the program is implemented and an agency selects specific targets for review, please identify the specific programs, regulations, and legislation involved. To the extent they are relevant, we will share with you the review efforts of other agencies.

#### 6. Centralized Review of Regulations

One of the themes in the Order is greater selectivity in the regulations reviewed by OIRA, so that we can free up our resources to focus on the important regulatory actions and expedite the issuance of those that are less important. Another theme is that we are to determine early in the process which regulations are important (the term in the Order is—"significant"). Among other things, this will permit agencies to conduct the needed analyses for these regulations as part of the development process, not as an after-the-fact exercise (Sec. 6(a)(3)(B)).

The Order defines "significant" regulatory actions" as those likely to lead to a rule (1) having an annual effect on the economy of \$100 million or more or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) creating a serious inconsistency or otherwise interfering with an action

taken or planned by another agency; (3) materially altering the budgetary impact of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues (Sec. 3(f)). This definition is not wholly susceptible to mechanical application; rather, in many instances, it will require the exercise of judgment. We will work with the agencies to come to a consensus on the meaning of this term in the context of the specific programs and characteristics of each agency.

To begin, we ask the appropriate personnel at each agency to work with the OIRA desk officer(s) to develop an appropriate list of rulemakings that are under development for submission to OIRA. For each rulemaking, please use the format below:

DEPARTMENT/REGULATORY COMPONENT. Title: (Indicate significance \*); Upcoming Action: [Identify]†; Planned Submission/Publication: [date]; RIN: [number]‡. Statutory/Judicial Deadline: [date, if any].

[Describe briefly what the agency is intending to do and why, including whether the program is new or continuing and, if continuing, the significant changes in program operations or award criteria. Briefly describe issues associated with the rulemaking, as appropriate, e.g., impacts (both benefits and costs), interagency and intergovernmental (State and local) effects, budgetary effects (e.g., outlays, number of years and awards,

<sup>1</sup> The Order is intended to cover any policy document of general applicability and future effect, which the agency intends to have the force and effect of law, such as guidances, funding notices, manuals, implementation strategies, or other public announcements, designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency. Such documents are normally published in the Federal Register, but can also be made available to the affected public directly.

\* State one of the following: "Not Significant", "Significant", or "Economically Significant". A designation as "Economically Significant" means that the regulatory action is likely to result in the effects listed in the first subsection—namely, i.e., "have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities." A regulatory action that is considered "Economically Significant" must ultimately be supported by the analyses set forth in Section 6(a)(3)(C).

† Indicate whether the upcoming regulatory action is a "Notice of Inquiry", "Funding Notice", "ANPRM", "NPRM", "Interim Final Rule", "Final Rule", or what other action it may be.

‡ RIN is the Regulation Identifier Number published in the Unified Regulatory Agenda. If a RIN has not been assigned, the agency should obtain one through the normal process by contacting the Regulatory Information Service Center.



administrative overhead), time pressures, and why the regulatory action is important, sensitive, controversial or precedential. For final regulatory actions, include a brief statement of the nature and extent of public comment, and the nature and extent of changes made in response to the public comments.] (Name and telephone number of program official who can answer detailed questions)]

We are not looking for a lengthy or detailed description of the issues listed above. All we need is information sufficient to confirm the characterization of "significant" or "not significant". Similarly, for final regulatory actions, the description of the public comments and changes is simply to enable us to decide whether we can expedite or weave our review of the final rule where, for example, there are few or no public comments and little or no substantive change from the previously reviewed NPRM.

Under the Executive Order, within 10 working days after OIRA receives this list, we will meet with or call your office to discuss whether or not listed regulatory actions should be submitted for centralized review (Sec. 6(a)(3)(A)). The purpose of this meeting is to confirm the characterization of the proposal as "significant" or "not significant." The characterization is important because, absent a material change in the development of the rule, those characterized as "not significant" need not be submitted for OIRA review before publication.

OIRA will also want to discuss the timing for updates that would identify any new regulatory actions under development. OIRA implemented this procedure with several agencies on a pilot basis while the Order was being drafted. We are most pleased by the results. It has in some instances taken one or two tries to develop a process that works for a particular agency. In most instances, submission of a list once a month has proven sufficient for our purposes.

Once it is clear that a rulemaking warrants review by OIRA, the process will be facilitated by your advising the OIRA staff as soon as possible on the basic concept, direction, and scope of the rulemaking. This will enable us to identify early the issues that we are concerned about and to inform agency personnel of the type of analyses that OIRA will look for when it reviews the regulatory action. All of this is designed to make the review process more efficient and avoid last minute problems.

When an agency submits a significant regulatory action for review, the Order

sets forth certain information that each agency should provide a description of the need for the regulatory action, how the regulation will meet that need, and an assessment of the potential costs and benefits of the regulatory action, together with an explanation of how it is consistent with a statutory mandate, promotes the President's priorities, and avoids undue interference with State, local, and tribal governments. This should not impose additional burden on the agency. All of the information should have been prepared as part of the agency's deliberative process; and much, if not all, of this information should already be set forth in the preamble of the proposal so as to allow more informed public comment.

If the regulatory action is economically significant (as defined in Sec. 3(f)(1)),<sup>7</sup> the Order sets forth additional information that an agency must provide—an assessment of benefits, costs, and of potentially effective and reasonably feasible alternatives to the planned regulatory action (Sec. 6(a)(3)(C)). We recognize that this material may take different forms for different agencies. We are reviewing our current guidance to see what changes, if any, are appropriate. Pending the conclusion of this review, agencies should continue to adhere to the existing OMB guidance on how to estimate benefits and costs.

In order to assure that the public is aware of our review under the Order and the possible effects that this review may have had, agencies should indicate in the preamble to the regulatory action whether or not the regulatory action was subject to review under E.O. 12866. On the other hand, there is no requirement that an agency document (in the preamble or in its submissions to OIRA) compliance with each principle of regulation set forth in the beginning of the Executive Order (Sec. 1(b)); we do, however, expect agencies to adhere to these principles and to respond to any questions that may be raised about how a regulatory action is consistent with these provisions of the Order.

The OIRA Administrator was given the authority to exempt any category of agency regulations from centralized review (Sec. 3(d)(4)). To begin with, we have decided that the previously granted exemptions should be kept in effect, except as the Order specifically includes them.\* Several additional

exemptions have been added as a result of our ongoing discussions with agencies. A list of current exemptions is set forth in Appendix C. We will add to this list as experience warrants. We urge you to contact the Administrator, or have your staff contact your OIRA desk officer, to discuss those categories you believe may be suitable for exemption.

#### 7. Openness and Public Accountability

To assure greater openness and accountability in the regulatory review process, the Order sets forth certain responsibilities for OIRA (Sec. 6(b)(4)). Among other things, OIRA is placing in its public reading room a list of all agency regulatory actions currently undergoing review. This list is updated daily, and identifies each regulatory action by agency, title, date received, and date review is completed.

The reading room also contains a list of all meetings and telephone conversations with the public and Congress to discuss the substance of draft regulations that OIRA is reviewing. Within OIRA, only the Administrator (or an individual specifically designated by the Administrator—generally the Deputy Administrator) may receive such oral communications.

When these meetings are scheduled, we are asking those outside the Executive branch to have communicated their concerns and supporting facts to the issuing agency before the meeting with OIRA. To assure that the matters discussed are known to the agency, we are inviting policy-level officials from the issuing agency to each such meeting.

In addition, written materials received from those outside the Executive branch will be logged in the reading room and forwarded to the issuing agency within 10 working days. It will be up to each agency to put these in its rulemaking docket.

After the regulation is published, OIRA is making available to the public the documents exchanged between OIRA and the issuing agency. These materials will also be made public even if the agency decides not to publish the regulatory action in the Federal Register. In addition, the Order directs that, after a regulatory action has been published in the Federal Register or otherwise released, each agency is to make available to the public the text submitted for review, and the required assessments and analyses (Sec. 6(a)(3)(E)). In addition, after the regulatory action has been published in the Federal Register or otherwise issued

of Export Administration, and to exclude State Department regulations involving the Munitions List.

<sup>7</sup> See footnote 4.

\* Section 3(d)(2) includes within the definition of "regulation" or "rule" those pertaining to "procurement" and the "import or export of non-defense articles and services." The OIRA Administrator interprets the latter to include within the scope of the Order the regulations of the Bureau

to the public, each agency is to identify for the public, in a complete, clear, and simple manner, the substantive changes that it made to the regulatory action between the time the draft was submitted to OIRA for review and the action was subsequently publicly announced, indicating those changes that were made at the suggestion or recommendation of OIRA (Sec. 6(a)(3)(E) (ii) and (iii)). Should you have any questions about these matters, please call the Administrator or one of your OIRA Desk Officers.

#### 8. Time Limits for OIRA Review

The Order sets forth strict time limits for OIRA review of regulatory actions. For any notices of inquiry, advance notice of proposed rulemaking, or other preliminary regulatory action, OIRA is to complete review within 10 working days (Sec. 6(b)(2)(A)). For all other regulatory actions, OIRA has 90 calendar days, unless OIRA has previously reviewed it and there has been no material change in the facts and circumstances upon which the regulatory action is based, in which case there is a limit of 45 days (Sec. 6(b)(2)(B)). Because of these tight time limits, we must work closely together to ensure that requests for clarification or information are responded to promptly. Upon receipt of a regulatory action, we plan to take a quick look and make certain that whatever analyses should be included are included, and to get back promptly to the agency to ask for whatever is missing.

In some instances, a reason for OIRA review will be the potential effect of a regulation on other agencies. In these circumstances, OIRA will attempt to provide the affected agencies with copies of the draft regulatory action as soon as possible. If you are aware that another agency has an interest in the draft regulatory action, please let us know quickly.

We also want to stress the provision in the Order that calls upon each agency, in emergency situations or when the agency is obligated by law to act more quickly than normal review procedures allow, to notify OIRA as soon as possible and to schedule the rulemaking proceedings so as to permit sufficient time for OIRA to conduct an adequate review (Sec. 6(a)(3)(D)).

#### 9. Regulation Identifier Number (RIN)

We ask that each agency include a Regulation Identifier Number in the heading of each regulatory action published in the Federal Register.\* This

will make it easier for the public and agency officials to track the publication history of regulatory actions throughout their life cycles and to link documents in the Federal Register with corresponding entries in the Unified Agenda of Federal Regulations (Sec. 4(b)) and the Regulatory Plan (Sec. 4(c)).

\* \* \* \* \*

We look forward to working with you to implement this Executive Order. If you have any questions, please let us know. We will, of course, provide additional guidance as experience and need dictate.

#### Appendix A—Agencies Exempt From E.O. 12866

Advisory Council on Historic Preservation  
African Development Foundation  
Alaska Natural Gas Transportation System, Office of the Federal Inspector  
American Battle Monuments Commission  
Arms Control and Disarmament Agency  
Board for International Broadcasting  
Central Intelligence Agency  
Commission of Fine Arts  
Committee for Purchase from the Blind and Severely Handicapped  
Export-Import Bank of the United States  
Farm Credit System Assistance Board  
Federal Financial Institutions Examination Council  
Federal Mediation and Conciliation Service  
Harry S. Truman Scholarship Foundation  
Institute of Museum Services  
Inter-American Foundation  
International Development Corporation  
Agency  
James Madison Memorial Fellowship Foundation  
Merit Systems Protection Board  
Navajo Hopi Indian Relocation Commission  
National Capital Planning Commission  
Office of Special Counsel  
Overseas Private Investment Corporation  
Panama Canal Commission  
Pennsylvania Avenue Development Corporation  
Peace Corps  
Selective Service System  
Tennessee Valley Authority  
United States Metric Board  
United States Information Agency  
United States International Development Cooperation Agency

#### Appendix B—Members of the Regulatory Working Group

Department of Agriculture

Department of Commerce  
Department of Defense  
Department of Education  
Department of Energy  
Department of Health and Human Services  
Department of Housing and Urban Development  
Department of the Interior  
Department of Justice  
Department of Labor  
Department of Transportation  
Department of the Treasury  
Department of Veterans Affairs  
Environmental Protection Agency  
Small Business Administration  
General Services Administration  
Equal Employment Opportunity Commission

#### Appendix C—Regulatory Actions Exempted From Centralized Regulatory Review

##### Department of Agriculture

*Food and Nutrition Service*—Special Nutrition program notices that revise reimbursement rates and eligibility criteria for the School Lunch, Child Care Food, and other nutrition programs.

*Food and Nutrition Service*—Food Stamp program notices that set eligibility criteria and deduction policies.

*Agricultural Marketing Service*—Regulations that establish voluntary standards for grading the quality of food.

*Animal and Plant Health Inspection Service*—Rules and notices concerning quarantine actions and related measures to prevent the spread of animal and plant pests and diseases.

*Animal and Plant Health Inspection Service*—Rules affirming actions taken on an emergency basis if no adverse comments were received.

*Rural Electrification Administration*—Rules concerning standards and specifications for construction and materials.

##### Department of Commerce

*National Oceanic and Atmospheric Administration*—Certain time-sensitive pre-season and in season Fishery Management Plan regulatory actions that set restrictions on fishing seasons, catch size, and fishing gear.

##### Department of Education

*Certain Final Rules Based on Proposed Rules*—Final regulations based on proposed regulations that OMB previously reviewed where: (1) OMB had not previously identified issues for review in a final regulation stage; (2) Education received no substantive public comment; and (3) the

\*The Office of the Federal Register has issued guidance to agencies on the placement of the RIN

number in their documents. See Document Drafting Handbook, 1991 ed., p. a.

proposed regulation is not substantively revised in the final regulation.

**Rules Directly Implementing Statute—**Final regulations that only incorporate statutory language with no interpretation.

**Notices of Final Funding Priorities—**Notices of final funding priorities for which OMB has previously reviewed the proposed priority.

#### **Department of Energy**

**Power Marketing Administrations—**Regulations issued by various power administrations relating to the sale of electrical power that they produce or market.

#### **Department of Health and Human Services**

**Food and Drug Administration—**Agency notices of funds availability.

**Food and Drug Administration—**Medical device reclassifications to less stringent categories.

**Food and Drug Administration—OTC** monographs, unless they may be precedent-setting or have large adverse impacts on consumers.

**Food and Drug Administration—Final** rules for which no comments were received and which do not differ from the NPRM.

#### **Department of the Interior**

**Office of Surface Mining—**Actions to approve, or conditionally approve, State regulatory mining actions or amendments to such actions.

**Office of Surface Mining—**Approval of State mining reclamation plans or amendments.

**Office of Surface Mining—**Cooperative agreements between OSM and States.

**United States Fish and Wildlife Service—**Certain parts of the annual migratory bird hunting regulations.

#### **Department of Transportation**

**All Office of DOT—**Amendments that postpone the compliance dates of regulations already in effect.

**Coast Guard—**Regatta regulations, safety zone regulations, and security zone regulations.

**Coast Guard—**Anchorage, drawbridge operations, and inland waterways navigation regulations.

**Coast Guard—**Regulations specifying amount of separation required between cargoes containing incompatible chemicals.

**Federal Aviation Administration—**Standard instrument approach procedure regulations, en route altitude regulations, routine air space actions, and airworthiness directives.

**Notional Highway Traffic Safety Administration—**Federal Motor Vehicle Safety Standard 109 table of tire sizes.

#### **Department of the Treasury**

**Internal Revenue Service, Bureau of Alcohol, Tobacco, and Firearms, and Customs Service—**Revenue rulings and procedures, Customs decisions, legal determinations, and other similar ruling documents. Major legislative regulations are covered fully.

#### **Environmental Protection Agency**

**Office of Pesticides and Toxic Substances—**Actions regarding pesticide tolerances, temporary tolerances, tolerance exemptions, and food additives regulations, except those that make an existing tolerance more stringent.

**Office of Pesticides and Toxic Substances—**Unconditional approvals of TSCA section 5 test marketing exemptions, and of experimental use permits under FIFRA.

**Office of Pesticides and Toxic Substances—**Decision documents

defining and establishing registration standards; decision documents and termination decisions for the RPAR process; and data call-in requests made under section 3(c)(2)(B) of FIFRA.

**Office of Air, Noise, and Radiation—**Rules that unconditionally approve revisions to State Implementation Plans.

**Office of Air, Noise, and Radiation—**Unconditional approvals of equivalent methods for ambient air quality monitoring and of NSPS, NESHAPS, and PSD delegations to States; approvals of carbon monoxide and nitrogen oxide waivers; area designations of air quality planning purposes; and deletions from the NSPS source categories list.

**Office of Water—**Unconditional approvals of State Water Standards.

**Office of Water—**Unconditional approval of State underground injection control programs, delegations of NPDES authority to States; deletions from the 307(a) list of toxic pollutants; and suspension of Toxic Testing Requirements under NPDES.

**Office of Solid Waste and Emergency Response—**Unconditional approvals of State authorization under RCRA of State solid waste management plans and of hazardous waste delisting petitions under RCRA.

#### **Pension Benefit Guaranty Corporation**

**Interest Rates—**Changes in interest rates on later premium payments and delinquent employer liability payments under sections 6601 and 6621 of the Internal Revenue Code as amended by the Tax Equity and Fiscal Responsibility Act of 1982.

BILLING CODE 3110-01-P

## Appendix A

EXECUTIVE ORDER 12686 REVIEWS  
OCTOBER 1, 1993 -- MARCH 31, 1994  
RECEIVED SINCE OCTOBER 1, 1993

AGENCY/ SUBAGENCY	REVIEW TIME	STAGE OF RULMAKING (DAYS)	SIGNIFICANCE	TITLE
UNITED STATES DEPARTMENT OF AGRICULTURE				
USDA-AgSEC	10	Final Rule	1	Rural empowerment zones and enterprise community regulations -- 7 CFR part 25
USDA-AgEC	7	Proposed Rule		Rules of practice governing formal adjudicatory proceedings -- 7 CFR parts 0, 1, 47, 50, 51, 52, 53, 54 and 190 and 9 CFR part 202
USDA-CISRS	5	Final Rule		Biotechnology risk assessment research grants program administrative provisions
USDA-FAS	32	Final Rule		Cooperative agreements for the development of foreign markets for agricultural commodities -- 7 CFR part 1485
USDA-FAS	36	Proposed Rule		Tobacco quota requirements (advance notice of proposed rulemaking)
USDA-ASCS	11	Final Rule		Poundage quota regulations and marketing assessments for the 1994 and 1995 crops of peanuts
USDA-ASCS	11	Final Rule		Obased pre-selling world price calculations, loan origination fees, and final loan maturity date -- 7 CFR parts 1421 and 1474, Workplan No. 93-005
USDA-ASCS	14	Final Rule	1	Price support loan requirements, interest-cumulated reserve program eligibility requirements -- Workplan No. 93-004
USDA-ASCS	14	Final Rule	2	Emergency assistance for the 1994 crop of peanuts: emergency assistance for the 1994 crop of peanuts: emergency assistance for the 1994 crop of peanuts
USDA-ASCS	11	Proposed Rule		Amendments to the regulations governing reductions in the price of milk received by producers required by the Commodity Budget Reconciliation Act of 1993
USDA-ASCS	11	Proposed Rule		1994 crop peanut national poundage quota and the minimum CCC export set-aside sales price for additional peanuts
USDA-ASCS	28	Final Rule		Selection and functions of agricultural stabilization and conservation state and county community committees
USDA-ASCS	11	Proposed Rule		Cotton marketing system, notes regarding comments
USDA-ASCS	11	Proposed Rule		Non-emergency haying and grazing on conservation reserve program grasslands -- Workplan No. 93-019
USDA-ASCS	11	Proposed Rule	2	Non-emergency haying and grazing on conservation reserve program grasslands -- Workplan No. ASCS 93-029
USDA-ASCS	97	Final Rule		Milling barley assessment
USDA-ASCS	3	Proposed Rule		1994-crop national marketing quotas for all kinds of tobacco -- Workplan No. 92-043
USDA-ASCS	3	Proposed Rule	1	Domestic marketing assessment -- Workplan No. ASCS 93-032
USDA-ASCS	14	Proposed Rule	1	Domestic marketing assessment -- Workplan No. 93-033
USDA-ASCS	14	Proposed Rule	1	Support prices for short wool, wool on uniform lambs, and mohair for the 1993 marketing year
USDA-ASCS	70	Final Rule	1	Debt settlement policies and procedures -- 7 CFR part 792, Workplan No. 92-030
USDA-ASCS	15	Interim Final Rule		1994-crop national peanut poundage quota -- Workplan No. 92-041
USDA-ASCS	15	Interim Final Rule		Revisions to the upland cotton user marketing certificate program -- Workplan No. 94-014
USDA-ASCS	16	Proposed Rule	2	Revisions to the upland cotton user marketing certificate program -- Workplan No. 94-014
USDA-ASCS	16	Proposed Rule		Revisions to the upland cotton user marketing certificate program -- Workplan No. 94-014
USDA-ASCS	21	Final Rule (N/C)		Using electronic cotton warehouse receipts, amendment to the U.S. Warehouse Act -- Workplan No. 92-049
USDA-FIC	8	Final Rule		Late planting options and the prevented planting endorsement, general crop insurance regulations -- 7 CFR part 401
USDA-FIC	43	Final Rule		General crop insurance regulations -- 7 CFR part 400
USDA-FIC	43	Final Rule		Mutual consent cancellation, general administrative regulation -- 7 CFR part 400
USDA-FIC	3	Final Rule		Late and prevented planting for various crop endorsements, general crop insurance regulations
USDA-FIC	3	Final Rule		Late and prevented planting for hybrid seed, general crop insurance regulations
USDA-REA	36	Proposed Rule		Pre-loan policies and procedures for electric loans
USDA-REA	11	Final Rule		Rural telephone bank and telephone program loan policies, design criteria, construction policies, and standards and specifications for materials, equipment
USDA-REA	11	Final Rule		Pre-loan policies and procedures for electric loans
USDA-FmHA	8	Final Rule		Housing application packaging grants -- 7 CFR part 1944-b
USDA-FmHA	36	Final Rule	2	Revolving and processing applications for former programs loans
USDA-FmHA	24	Proposed Rule		Revisions to the direct emergency loan instructions to implement administrative decisions pertaining to the applicant loan eligibility calculation and appraisal
USDA-FmHA	10	Proposed Rule		Removal of the prohibition against charging interest on interest on FmHA guaranteed loans
USDA-FmHA	3	Final Rule (N/C)		Revisions to the direct emergency loan instructions to implement administrative decisions pertaining to the applicant loan eligibility calculation, appraisal
USDA-SCS	10	Final Rule		Emergency wetlands reserve program
USDA-APHIS	13	Proposed Rule		Importation of rechecked articles, Port Everglades, FL -- APHIS Docket No. 93-029-1, OERPLA Workplan No. 93-019
USDA-APHIS	59	Proposed Rule		Importation of rechecked articles, Port Everglades, FL -- APHIS Docket No. 93-029-1, OERPLA Workplan No. 93-019
USDA-APHIS	59	Proposed Rule		Importation of rechecked articles, Port Everglades, FL -- APHIS Docket No. 93-029-1, OERPLA Workplan No. 93-019
USDA-APHIS	7	Proposed Rule		Permitted for the importation of animals, Kentucky and New Jersey -- APHIS Docket No. 93-016-3, OERPLA Workplan No. 93-011
USDA-APHIS	7	Proposed Rule		Permitted for the importation of animals, Kentucky and New Jersey -- APHIS Docket No. 93-016-3, OERPLA Workplan No. 93-011

\* Significance -- 1) Designated Significant by Agency, 2) Designated Significant by OIRA.

Ext -- Extended at request of the agency.



Significance -- 1) Designated Significant by Agency, 2) Designated Significant by OIRA  
Ext -- Extended at request of the agency



EXECUTIVE ORDER 12898, REVISED  
OCTOBER 1, 1983 -- MARCH 31, 1984  
RECEIVED SINCE OCTOBER 1, 1983

AGENCY/ SUBAGENCY	REVIEW DATE (DAY)	STAGE OF RULEMAKING	SIGNIFICANCE	TITLE
USDA-FS	21	Final Rule		National forest system notices, comment, and appeal procedures
USDA-FS	34	Proposed Rule		Hells Canyon private land use regulations -- 36 CFR 292, subpart e
USDA-FS	1	Proposed Rule		Outing use on national forest system lands
USDA-FS	2	Proposed Rule	2	Groundwater management on national forest system lands
USDA-FS	24	Proposed Rule		Prohibition -- 36 CFR part 261, law enforcement support activities -- 36 CFR part 262
<b>DEPARTMENT OF COMMERCE</b>				
DOC-EDA	67	Final Rule		Property management standards
DOC-ITA	26	Proposed Rule		Watch duty-- exemption program
DOC-USTIA	8	Final Rule		Notice of availability of financial assistance for projects to support tourism trade development in midwest states affected by the widespread flooding of 1993
DOC-NOMA	4	Proposed Rule		Reef fishery resources of the Gulf of Mexico, amendment 3, management measures including 3 SM Zs
DOC-NOMA	0	Proposed Rule		The taking of marine mammals incidental to underwater detonation of explosives in the outer sea test range, Pt. Mugu, California
DOC-NOMA	9	Proposed Rule		Revised management plan for the Bering Sea and Aleutian Islands area
DOC-NOMA	23	Proposed Rule		Observer coverage of the Groundfish fisheries in the Gulf of Alaska and the Bering Sea and Aleutian Islands area
DOC-NOMA	1	Final Rule		Fishery management plan for the Shrimp fishery for the South Atlantic region
DOC-NOMA	5	Proposed Rule		Reef fish resources of the Gulf of Mexico, management measures to enhance enforcement and data collection -- amendment 7
DOC-NOMA	1	Proposed Rule		Continued regulatory authority for the Bering Sea and Aleutian Islands area
DOC-NOMA	1	Proposed Rule		Deriving the term as it pertains to fish import regulations under the Marine Mammal Protection Act
DOC-NOMA	7	Proposed Rule		Improve British excluder device requirement in the Northern Shrimp fishery under the fishery management plan for the northeast multispecies fishery
DOC-NOMA	3	Proposed Rule		Establish procedures for the National Weather Service to follow in certifying when NSW field offices are closed, relocated, or automated
DOC-NOMA	20	Final Rule		Amendments to the Fishery Management Plan for the Northeast Multispecies Fishery
DOC-NOMA	9	Final Rule		Amendments to the Fishery Management Plan for the Northeast Multispecies Fishery
DOC-NOMA	22	Proposed Rule		Notice of the Bering Sea and Aleutian Islands and require increased observer coverage and improved equipment for measuring groundfish total catches
DOC-NOMA	22	Final Rule		Notice of availability of financial assistance, FY 94 Marlin projects
DOC-NOMA	27	Proposed Rule	1	Northeast multispecies fishery plan -- amendment 5
DOC-NOMA	18	Proposed Rule		Atlantic swordfish fishery, voluntary plan program to allow retention of undersized swordfish for donation to charity
DOC-NOMA	18	Final Rule		Atlantic fisheries of the Northern Pacific -- the West Coast -- based longline fishery mandatory observer program
DOC-NOMA	18	Final Rule	1	Designated Significant by Agency
DOC-NOMA	8	Final Rule		Summer flounder fishery -- amendment 5
DOC-PTO	3	Final Rule	2	Revision of trademark fees
DOC-NITA	25	Notice	1	Notice of availability, TAMP of funds
DOC-NIST	12	Proposed Rule		Figs 71: advanced data communication control procedures (ADCCP)
DOC-NIST	7	Final Rule		Standard reference data grants and cooperative agreements, program announcement
DOC-NIST	11	Final Rule		Precision measurement grants
DOC-NIST	6	Final Rule		Standard reference data grants
DOC-NIST	22	Final Rule		Final: open document architecture (ODA) master document application profile (dip) -- solicitation of comments
DOC-NIST	13	Proposed Rule	2	Final: security label for the Government open systems interconnection profile -- second solicitation of comments
DOC-NIST	20	Proposed Rule	2	Figs 140-1: security requirements, notice of proposed validation requirements for products
DOC-NIST	8	Final Rule	2	Figs: approval of the second encryption standard

\* Significance -- 1) Designated Significant by Agency. 2) Designated Significant by OIRA.  
Ext -- Extended at request of the agency

\* Significance -- 1) Designated Significant by Agency, 2) Designated Significant by OIRA  
Ext -- Extended at request of the agency

EXECUTIVE ORDER 12866 REVIEWS  
OCTOBER 1, 1993 -- MARCH 31, 1994  
REVISED SINCE OCTOBER 1, 1993

AGENCY/ SUBAGENCY	REVIEW TIME (DAYS)	STAGE OF RULEMAKING	SIGNIFICANCE	TITLE
ED--OEI	0	Notice	2	Notice of proposed priorities for model projects in encouraging female & minority students in mathematics & science & for model science-based professional ...
ED--EDMAN	6*	Proposed Rule	1	State-administered programs and Federal, state, and local partnership for educational improvement
ED--EDMAN	1	Proposed Rule	2	Education Department generalist administrative regulations (EDGAR) -- 34 CFR parts 75 and 78
DEPARTMENT OF ENERGY				
DOE--ENRDP	88	Final Rule		Nuclear safety management
DOE--ENRDP	78	Proposed Rule	1	Energy conservation standards for eight types of appliances
DOE--EE	85	Proposed Rule		Calculation of a equivalent petroleum-based fuel economy of electric vehicles -- 10 CFR part 174
DOE--PR	18	Proposed Rule	2	Acquisition of Federal information resources by contracting, provide procedures governing the acquisition of Federal information
DOE--PR	18	Proposed Rule	2	Acquisition regulation, updated coverage
DOE--PR	48	Proposed Rule	2	Acquisition regulation, updating of patent regulations
DEPARTMENT OF HEALTH AND HUMAN SERVICES				
HHS--PHS	32	Final Rule		Notice regarding section 602 of the Veterans Health Care Act of 1992, entity guidelines
HHS--PHS	23	Final Rule		Health Education Assistance Loan (HEAL) Program: school collection assistance
HHS--PHS	10	Final Rule		Notice of competitive grant applications for tribal management grants for American Indians/Alaska natives, Indian Health Service
HHS--PHS	21	Proposed Rule		Notice of funding opportunities for research in genetic medicine and dentistry
HHS--PHS	15	Notice		Health care research and training opportunities scholarship grant programs
HHS--PHS	14	Notice		Notice of availability of funds for loan repayment for health professions educational trainees
HHS--PHS	6	Proposed Rule		Food labeling, nutrition labeling, small business exemption
HHS--PHS	7	Notice		Indian Health Service research program, grants application announcement
HHS--PHS	10	Notice		Health care provider education in HIV/AIDS
HHS--PHS	11	Notice		HIV/AIDS research program
HHS--PHS	14	Proposed Rule		Medical facility construction and modernization, requirements for provision of services to persons unable to pay
HHS--PHS	4	Notice		Healthy Start initiative, special project grants
HHS--PHS	12	Notice		Community support program: mental health systems improvement demonstration grants for consumer and family networks
HHS--PHS	5	Notice		Cooperative agreements for studies to evaluate the effectiveness of interventions to prevent or reduce childhood lead poisoning, notice of availability of funds
HHS--PHS	5	Notice		Cooperative agreements for studies to determine sources and predictors of lead poisoning in young children, notice of availability of funds for FY 1994
HHS--FDA	2	Proposed Rule	2	Food labeling: health claims and label statements, isotole and neutral tube defects
HHS--FDA	2	Proposed Rule		Food labeling: health claims for dietary supplements
HHS--FDA	15	Proposed Rule		Medical devices, hearing aid requirements
HHS--FDA	1	Final Rule		Medical devices, hearing aid requirements
HHS--FDA	1	Final Rule		Quality standards and certification requirements for mammography facilities
HHS--FDA	1	Final Rule		Requirements for accrediting bodies of mammography facilities
HHS--FDA	0	Final Rule	1	Requirements for nutrient content claims for dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances, food labeling
HHS--FDA	0	Final Rule		Health claims and label statements, isotole and neutral tube defects, food labeling
HHS--FDA	0	Final Rule		Notice of availability of funds for food labeling
HHS--FDA	0	Final Rule		Establishment of date of expiration, dietary supplements
HHS--FDA	0	Final Rule		General requirements for health claims for dietary supplements, food labeling
HHS--FDA	58	Proposed Rule	2	General requirements for over-the-counter human use, proposed amendment to the tentative final monograph
HHS--HSA	22	Proposed Rule		Charitable facility compliance alternative -- 42 CFR subpart I
HHS--HSA	11	Final Rule		Program announcement for nursing special project grants for FY 1994
HHS--HSA	14	Final Rule		Program announcement for nursing special project grants for FY 1994
HHS--HSA	7	Proposed Rule		General statutory funding preference for nurse anesthetist traineeships for FY 1994, program announcement and proposed minimum percentages

\* Significance -- 1) Designated Significant by Agency, 2) Designated Significant by OIRA  
Fol -- Extended at request of the agency

EXECUTIVE ORDER 12898 REVIEWS  
OCTOBER 1, 1993 -- MARCH 31, 1994  
RECEIVED BANCE OCTOBER 1, 1993

AGENCY/ SUBAGENCY	REVIEW TIME (DAYS)	STAGE OF RULEMAKING	SIGNIFICANCE	TITLE
HHS-HSA	7	Proposed Rule		Grants for professional nurse traineeships for FY 1994, program announcement and proposed minimum percentages
HHS-HSA	12	Proposed Rule		Announcement of availability of funds for FY 1994, program announcement and proposed minimum percentages
HHS-HSA	8	Proposed Rule		Program announcement for AIDS regional education and training centers
HHS-HSA	6	Proposed Rule		Program announcement for implementation of the statutory funding preference for allied health project grants for FY 1994, proposed minimum percentages
HHS-HSA	10	Final Rule		Rural health outreach program
HHS-HSA	10	Final Rule		Grants for health professions projects in pediatrics
HHS-HSA	10	Final Rule		Grants for health professions projects in pediatrics
HHS-HSA	15	Proposed Rule		Program announcement for grants for establishment of departments of family medical education programs for FY 1994 -- PN 2146
HHS-HSA	7	Proposed Rule		Implementation of the general statutory funding preference for grants for nurse anesthetist education programs for FY 1994 -- PN 2154
HHS-HSA	14	Final Rule		Disseminated health professions facility loan repayment program -- PN 2160
HHS-HSA	14	Final Rule		Program announcement for grants for special project grants to schools of public health for FY 1994
HHS-HSA	16	Proposed Rule		Program announcement for grants for special project grants to schools of public health for FY 1994
HHS-HSA	16	Proposed Rule		Special funding preference and priority for rural health care projects
HHS-HSA	16	Proposed Rule		Special project grants, maternal and child health services, federal set-aside program, collaborative health, education, and human services systems
HHS-HSA	16	Final Rule		Emergency medical services for children demonstration grants, notice of availability of funds
HHS-HSA	13	Final Rule		Cooperative agreements for area health education centers programs, program announcement
HHS-HSA	13	Final Rule		Cooperative agreements for area health education centers programs, program announcement
HHS-HSA	14	Proposed Rule		Special project grants and community scholarship programs
HHS-HSA	14	Proposed Rule		Special project grants and community scholarship programs
HHS-HSA	14	Notice		Availability of funds for community scholarship programs, maternal and child health services, federal set-aside program
HHS-HSA	14	Notice		Rural intermedicine grant program
HHS-HSA	14	Notice		Availability of funds for community and migrant health center activities
HHS-HSA	6	Notice		Rural health outreach grant program
HHS-HSA	6	Notice		Rural health outreach grant program
HHS-HSA	6	Notice		Grants for health professions projects in pediatrics
HHS-HSA	10	Notice		Grants for health professions projects in pediatrics
HHS-HSA	10	Notice		Availability of funds for grants to provide comprehensive health promotion, disease prevention, and primary health care services to native Hawaiians
HHS-HSA	14	Notice		Special projects of national significance
HHS-HSA	14	Notice		Model state - supported AHCC program
HHS-HSA	6	Notice		Notice of availability of funds for general family planning training grants
HHS-HSA	12	Notice		Notice of availability of funds for family planning nurse practitioner training grants
HHS-HSA	12	Notice		Notice of availability of funds for family planning nurse practitioner training grants
HHS-CDC	7	Final Rule		Grants for injury control research centers, notice of availability of funds for FY 1994 -- Announcement No. 403
HHS-CDC	23	Proposed Rule		Evaluation of a community intervention in China of the use of Periconceptional Folic Acid supplements to prevent Spina Bifida and Anencephaly
HHS-CDC	16	Proposed Rule		FY 1994 preventive health services addendum to announcement 401, standard accelerated prevention campaign project grants -- Announcement No. 400a
HHS-CDC	16	Proposed Rule		Grants for injury control research centers, notice of availability of funds for FY 1994 -- Announcement No. 400
HHS-CDC	6	Notice		Grants for injury control research centers, notice of availability of funds for FY 1994 -- Announcement No. 400
HHS-CDC	9	Notice		Announcement of a cooperative agreement to the association of state and territorial public health laboratory directors -- Announcement No. 413
HHS-CDC	9	Notice		Grants for education programs in occupational safety and health, notice of availability of funds for FY 1995 -- Announcement No. 123
HHS-CDC	18	Notice		Announcement of a cooperative agreement to the ambulatory sentinel practice network -- Announcement No. 416
HHS-CDC	5	Notice		State-based programs to reduce the burden of diabetes: a health systems approach -- Announcement No. 424
HHS-MH	4	Final Rule		National Heart, Lung, and Blood Institute grants for prevention and control projects
HHS-MH	17	Final Rule		Minority biomedical research support program
HHS-MH	35	Final Rule		MH guidelines on the inclusion of women and minorities as subjects in clinical research
HHS-MH	21	Final Rule		Availability of training fellowships under the MH Intramural Research Training Award (IRTA) Program
HHS-SAMHSA	17	Notice		Substance abuse prevention demonstration grants for high risk youth populations
HHS-HCFA	56	Proposed Rule	1	Extended Medicaid for certain families who lose AFDC eligibility because of increased earned income or loss of earned income disregard, work supplementation...
HHS-HCFA	34	Final Rule		Extended Medicaid for certain families who lose AFDC eligibility because of increased earned income or loss of earned income disregard, work supplementation...
HHS-HCFA	47	Final Rule		Extended Medicaid for certain families who lose AFDC eligibility because of increased earned income or loss of earned income disregard, work supplementation...
HHS-HCFA	75	Final Rule		Extended Medicaid for certain families who lose AFDC eligibility because of increased earned income or loss of earned income disregard, work supplementation...
HHS-HCFA	72	Proposed Rule	1	Special payment limits for home blood glucose monitors -- 42 CFR part 114, PRD-778-1c
HHS-HCFA	72	Final Rule		Special payment limits for home blood glucose monitors -- 42 CFR part 114, PRD-778-1c
HHS-HCFA	71	Proposed Rule	2	Reduction of incurred medical expenses (spenddown), Medicaid -- MB 020-1c
HHS-HCFA	71	Proposed Rule		Reduction of incurred medical expenses (spenddown), Medicaid -- MB 020-1c
HHS-HCFA	70	Final Rule		Revisions to the definition of end-stage renal disease and resumption of entitlement
HHS-HCFA	70	Final Rule		Health care financing research and demonstration cooperative agreements and grants for FY 1993 and 1994

\* Significance -- 1) Designated Significant by Agency. 2) Designated Significant by OIRA  
F-1 -- Extended at request of the Agency

EXECUTIVE ORDER 12968 REVIEWS  
OCTOBER 1, 1993 -- MARCH 31, 1994  
RECEIVED SINCE OCTOBER 1, 1993

AGENCY/ SUBAGENCY	REVIEW TIME (DAYS)	STAGE OF RULEMAKING	SIGNIFICANCE	TITLE
HHS-HCFA	61	Final Rule		Coverage of Epopurin (EPQ) used by competent home dialysis patients -- BPD-737-1
HHS-HCFA	5	Final Rule	1	Revised and revised and revised guidelines for home dialysis patients who have exhausted other entitlement -- OACT-043-n
HHS-HCFA	38	Proposed Rule	1	Proposed additions to and deletions from the list of dialysis facilities for home dialysis -- BPD-776-pn
HHS-HCFA	90	Proposed Rule	2	Standards for quality of water used in dialysis and revised guidelines on reuse of hemodialysis filters for end-stage renal disease patients
HHS-HCFA	67	Final Rule	2	Partial hospitalization services in Community Mental Health Centers
HHS-HCFA	12	Final Rule	1	Monthly actual rates and monthly supplementary medical insurance premium rates for calendar year 1994 -- BPD-774
HHS-HCFA	12	Final Rule	1	Limit on payments to HMOs, CAPs, and HMOs for OTC -- OACT-044-n
HHS-HCFA	90	Proposed Rule	1	Health Maintenance Organization and Competitive Medical Plan regional coverage decisions, Medicare -- BPD-730-p
HHS-HCFA	66	Proposed Rule	2	Revisions to payment policies and adjustments to the relative value units under the Physician fee schedule, Medicare program -- BPD-770-1c
HHS-HCFA	6	Final Rule	1	Limitations on aggregate payments to disproportionate share hospitals, FY 1994
HHS-HCFA	45	Final Rule	1	Limit on payments to disproportionate share hospitals, FY 1994
HHS-HCFA	54	Final Rule	1	Limit on payments to disproportionate share hospitals, FY 1994
HHS-HCFA	69	Proposed Rule	1	Limit on payments to disproportionate share hospitals, FY 1994
HHS-HCFA	13	Proposed Rule	1	Limit on payments to disproportionate share hospitals, FY 1994
HHS-HCFA	9	Final Rule	1	Withdrawal of coverage of diagnostic nocturnal penile tumescence testing (impotence testing), Medicare program -- MB-13-p
HHS-HCFA	63	Final Rule	1	Schedule of limits for skilled nursing facility inpatient routine service costs, effective October 1, 1993 -- BPD-780-pn
HHS-HCFA	63	Final Rule	1	Changes to the requirement for annual physician acknowledgment of physician attestation -- BPD-795-nc
HHS-HCFA	13	Final Rule	1	Changes to the requirement for annual physician acknowledgment of physician attestation -- BPD-795-nc
HHS-HCFA	45	Final Rule	1	Changes to the requirement for annual physician acknowledgment of physician attestation -- BPD-795-nc
HHS-HCFA	37	Final Rule	1	Changes to the requirement for annual physician acknowledgment of physician attestation -- BPD-795-nc
HHS-HCFA	56	Proposed Rule	2	Computer matching and privacy protection for Medicaid eligibility
HHS-HCFA	52	Final Rule	2	Intermediate and carrier functions, Medicare program
HHS-HCFA	37	Final Rule	2	Data, standards, and methodology used to establish budgets for fiscal intermediaries and carriers, Medicare program
HHS-HCFA	37	Final Rule	2	Post-contract procedures and other coordinated care issues -- OCC-611-p
HHS-HCFA	37	Final Rule	2	Post-contract procedures and other coordinated care issues -- OCC-611-p
HHS-HCFA	26	Final Rule	2	Diagnostic codes on physician bills, Medicare -- BPD-884-1
HHS-HCFA	56	Final Rule	1	Suspension of benefits where individual is deported, exemption from social security because of religious beliefs -- 20 CFR part 404, subparts 4, a, and b
HHS-HCFA	56	Final Rule	1	Suspension of benefits where individual is deported, exemption from social security because of religious beliefs -- 20 CFR part 404, subparts 4, a, and b
HHS-HCFA	31	Final Rule	1	Continued entitlement of deemed spouse -- 20 CFR part 404, subparts 4, a, and b
HHS-HCFA	58	Final Rule	2	Continued entitlement of deemed spouse -- 20 CFR part 404, subparts 4, a, and b
HHS-HCFA	54	Final Rule	2	Re-determination of supplemental security income eligibility -- 20 CFR part 416, regulation No. 16, subpart b, SSA-181
HHS-HCFA	58	Proposed Rule	1	Revised medical criteria for determination of disability, musculoskeletal system and related criteria -- Regulation No. 4, subpart p
HHS-HCFA	58	Final Rule	1	Revised medical criteria for determination of disability, musculoskeletal system and related criteria -- Regulation No. 4, subpart p
HHS-HCFA	58	Final Rule	1	Revised medical criteria for determination of disability, musculoskeletal system and related criteria -- Regulation No. 4, subpart p
HHS-HCFA	69	Final Rule	1	Revised medical criteria for determination of disability, musculoskeletal system and related criteria -- Regulation No. 4, subpart p
HHS-HCFA	0	Final Rule	1	Revised medical criteria for determination of disability, musculoskeletal system and related criteria -- Regulation No. 4, subpart p
HHS-HCFA	14	Proposed Rule	1	Determining disability and blindness, extension of expiration date for cardiovascular system listings -- 20 CFR part 404, Regulation No. 4, subpart p, insurance
HHS-HCFA	20	Proposed Rule	1	Availability of financial assistance for welfare, American social and economic development projects to promote self-sufficiency
HHS-HCFA	20	Final Rule	1	Notice of proposed program instruction issued to all field programs to provide a one-time environment
HHS-HCFA	20	Final Rule	1	Statewide automated child welfare information systems
HHS-HCFA	13	Notice	1	Adoption and foster care analysis and reporting system
HHS-HCFA	20	Notice	1	The administration on developmental disabilities announcing the request for public comments on proposed developmental disabilities funding
HHS-HCFA	20	Final Rule	1	Availability of financial assistance for improving the capability of Indian tribal governments to regulate environmental quality
HHS-HCFA	51	Proposed Rule	1	Head Start Public and Indian Housing Child Care Demonstration Project, grants availability, FY 1993 program announcement
HHS-HCFA	64	Proposed Rule	1	Grants for state and community programs on aging
HHS-HCFA	17	Proposed Rule	2	Revisions to the peer review organization sanctions process
HHS-HCFA	17	Proposed Rule	2	Child support enforcement, paternity establishment

\* Significance -- 1) Designated Significant by Agency, 2) Designated Significant by OIRA  
F-1 -- Extended at request of the agency



EXECUTIVE ORDER 12088 REVIEWS  
OCTOBER 1, 1983 -- MARCH 31, 1984  
RECEIVED SINCE OCTOBER 1, 1983

AGENCY/ SUBAGENCY	REVIEW TIME (DAYS)	STAGE OF RULEMAKING	SIGNIFICANCE	TITLE
<b>DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT</b>				
HUD-HUDSEC	90	Proposed Rule		Lead-based paint hazard elimination
HUD-HUDSEC	5	Final Rule		Prohibition of advance disclosure of funding decisions, amendments -- -- part 4
HUD-HUDSEC	36	Final Rule		Revision of HUD Circular A-133
HUD-HUDSEC	36	Final Rule		Home Investment Partnerships Program (FIR-3411)
HUD-HUDSEC	7	Interim Final Rule		Home Investment Partnerships Program
HUD-OH	19	Final Rule		Electronic transmission of required data for certification and recertification and subsidy billing procedures for multifamily subsidized projects
HUD-OH	15	Final Rule		GHMA requests for full insurance on conformance loans
HUD-OH	6	Proposed Rule		Subsidized mortgage interest on down payment and down payment escrow accounts
HUD-OH	17	Final Rule		Enforced procedures for RTC multifamily properties
HUD-OH	20	Final Rule		Flexible subsidy program for troubled projects -- -- 24 CFR part 219
HUD-OH	43	Final Rule	1	Manufactured home construction and safety standards on wind standards
HUD-OH	60	Proposed Rule	2	Assisted living facilities under section 232
HUD-OH	26	Proposed Rule	1	Yield and density standards
HUD-OH	26	Proposed Rule	1	Correct rent annual adjustment factors, revision to part 880 HAP
HUD-OH	54	Final Rule	1	Amendments to regulation X, the Real Estate Settlement Procedures Act regulation (subordinate items) -- -- FR-3382
HUD-OH	21	Final Rule	1	Multifamily property disposition, state housing finance agency demonstration program
HUD-OH	14	Proposed Rule	1	Sale of HUD-held multifamily mortgages
HUD-OHMA	86	Proposed Rule	2	Real estate mortgage investment conduit, notice of GHMA REMC (FR-3255)
HUD-CPD	82	Proposed Rule	2	Miscellaneous amendments to correct identified deficiencies in the Community Development Block Grant Program -- -- part 370
HUD-CPD	8	Final Rule	2	Designation of empowerment zones and enterprise communities -- -- part 597
HUD-CPD	11	Notice		Notice of request for consideration for community development corporation designation
HUD-FHEO	1	Final Rule	1	Administrative proceedings under section 812 of the Fair Housing Act (FR-3483)
HUD-PH	40	Proposed Rule	1	Designated housing, public housing designated for occupancy by disabled, elderly, or disabled and elderly families, proposed new part 943 and proposed amendments
HUD-PH	48	Proposed Rule		Amendments to the Comprehensive Grant Program
HUD-PH	35	Proposed Rule		Tenant participation and tenant opportunities in public housing (FR-3566)
<b>DEPARTMENT OF THE INTERIOR</b>				
DOI-BLM	14	Final Rule		Onshore oil and gas well segment, unproven areas
DOI-BLM	14	Final Rule		Onshore oil and gas well segment, unproven areas
DOI-BLM	3	Final Rule		Protection, management, and control of wild free-ranging horses and burros
DOI-BLM	5	Proposed Rule	1	Department hearings and appeals procedures, cooperative relations gaging administration, exclusive of Alaska
DOI-BLM	33	Proposed Rule		Onshore oil and gas operations, Federal and Indian oil and gas leases, onshore oil and gas order no. 3, measurement of gas
DOI-BLM	4	Proposed Rule	1	Department hearings and appeals procedures, cooperative relations gaging administration, exclusive of Alaska
DOI-RB	15	Proposed Rule		Mitigate losses and damages resulting from drought -- -- proposed rescission of 43 CFR part 423
DOI-RB	15	Proposed Rule		Payment of claims for actual damages -- -- proposed rescission of 43 CFR part 419
DOI-RB	15	Proposed Rule		Exchange of certain unperfected farm units -- -- proposed rescission of 43 CFR part 408
DOI-RB	15	Proposed Rule		Management of water rights for individuals receiving benefits -- -- proposed rescission of 43 CFR part 220
DOI-MMS	10	Final Rule		Administrative amendments of regulations governing royalty oil survey requirements, information collection requirements and addresses
DOI-FWS	9	Final Rule		Injurious wildlife: Importation of fish or fish eggs
DOI-FWS	14	Final Rule		Incidental, but not intentional, take of small numbers of Polar Bears and Walrus during oil and gas industry operations (exploration, development, and production)
DOI-FWS	15	Final Rule		Wild Bird Conservation Act
DOI-FWS	7	Proposed Rule	1	Endangered and threatened plants and animals, proposed revision of the special rule for nonessential experimental population of Red Wolves in North Carolina

\* Significant -- -- 1) Designated Significant by Agency, 2) Designated Significant by OIRA

Ext -- -- Extended at request of the agency

EXECUTIVE ORDER 12958 REVIEWS  
OCTOBER 1, 1993 -- MARCH 31, 1994  
RECEIVED SINCE OCTOBER 1, 1993

AGENCY/ SUBAGENCY	REVIEW TIME (DAYS)	STAGE OF RULEMAKING	SIGNIFICANCE	TITLE
DOI-FWS	107	Proposed Rule	Ext	Wild Bird Conservation Act of 1992
DOI-FWS	23	Final Rule		Coyote--Endangered
DOI-FWS	4	Final Rule		Endangered and threatened wildlife and plants, special rule concerning take of the threatened Coastal California Overlander
DOI-FWS	56	Final Rule		Endangered and threatened wildlife and plants, designation of critical habitat for the Least Bell's Vireo
DOI-FWS	52	Proposed Rule		Regulations prohibiting taking of free ranging Wolves and Wolverines on Alaska national wildlife refuge on the same day the trapper or hunter is airborne
DOI-FWS	36	Proposed Rule	1	Endangered and threatened wildlife and plants, revised proposed critical habitat designation for the Delta Smelt
DOI-FWS	36	Final Rule		Endangered and threatened wildlife and plants, revised proposed critical habitat designation for the Delta Smelt
DOI-FWS	2	Proposed Rule	1	Endangered and threatened wildlife and plants, proposed designation of critical habitat for the Desert Tortoise
DOI-FWS	16	Final Rule		Endangered and threatened wildlife and plants, proposed designation of critical habitat for the Marked or Blunt
DOI-FWS	16	Final Rule		Designation of critical habitat for the threatened Coach Minnow, endangered and threatened wildlife and plants
DOI-FWS	4	Final Rule	1	Designate critical habitat for four endangered Colorado River fishes
DOI-NPS	23	Proposed Rule	2	National Capital Region parks, sale and distribution of newspapers, leaflets, and pamphlets
DOI-OSMRE	19	Proposed Rule		Coal formation fire control
DOI-BIA	62	Proposed Rule	1	Indian Self-Determination and Education Assistance Act regulations
DOI-BIA	24	Final Rule		Protection of archeological resources
DOI-BIA	43	Proposed Rule		General forest regulations
DOI-BIA	32	Final Rule		Preparation of rolls of Indians, roll of Independent Seminole Indians of Florida
DOI-BIA	14	Interim Final Rule	1	Procedures for establishing that an American Indian group exists as an Indian tribe -- 25 CFR 83
DOI-ASPMB	43	Final Rule	1	Natural Resources Damage Assessments
DEPARTMENT OF JUSTICE				
DOJ-PARCOM	24	Proposed Rule		Category eight policy for murder -- 28 CFR 2.20
DOJ-PARCOM	24	Final Rule		Prisoners transferred pursuant to treaty -- 28 CFR 2.62
DOJ-PARCOM	24	Proposed Rule		Ammunition as a weapon -- 28 CFR 2.20
DOJ-INS	3	Final Rule		Approval process for school to admit nonimmigrant students
DOJ-INS	4	Final Rule		Temporary protected status, exception to registration deadlines
DOJ-INS	4	Proposed Rule		Petitioning for foreign-born orphans by United States citizens
DOJ-INS	4	Proposed Rule		Control of employment of aliens
DOJ-INS	28	Proposed Rule		Nonimmigrant classes, B visitor for business or pleasure
DOJ-INS	28	Proposed Rule		Employment of nonimmigrants
DOJ-INS	41	Proposed Rule		Rules and procedures for adjudication of applications for asylum or withholding of deportation and for employment authorization
DOJ-DEA	3	Proposed Rule		Reporting on psychotropic substances
DOJ-BOP	25	Proposed Rule		Drug abuse treatment programs
DOJ-BOP	23	Final Rule		Mandatory English as a second language program
DOJ-BOP	11	Final Rule		Compassionate release
DOJ-BOP	23	Final Rule		Use of force and application of restraints
DEPARTMENT OF LABOR				
DOL-ETA	20	Final Rule	1	Job Training Partnership Act (Job Corps) -- title IV-b
DOL-OSHA	9	Proposed Rule	1	Indoor air quality

\* Significance -- 1) Designated Significant by Agency, 2) Designated Significant by OIRA  
Ext -- Extended at request of the agency

E: CUTURE ORDER 12686 REVIEWS  
C: ORDER 1, 1989 -- MARCH 31, 1994  
RECEIVED SEPTEMBER 1, 1989

AGENCY/ SUBAGENCY	REVIEW STAGE OF TIME RULEMAKING (DAYS)	SIGNIFICANCE	TITLE
<b>DEPARTMENT OF STATE</b>			
STATE	26	Final Rule	Amendments to the international traffic in arms regulations (ITAR), the U.S. munitions list, category V -- 22 CFR part 121.1
STATE	26	Final Rule	Amendments to the international traffic in arms regulations (ITAR), the U.S. munitions list, category VI -- 22 CFR part 121.1
STATE	15	Proposed Rule	Grants and cooperative agreements with institutions of higher education, hospitals, and other nonprofit organizations
STATE-AFA	20	Final Rule	Foreign prohibition on longshore work by U.S. nationals
STATE-AFA	4	Proposed Rule	Diversity of immigrants -- 22 CFR 42.33. Implementation of sections 201(a)(2), 201(c), and 204(a)(1)(D) of the Immigration and Nationality Act as amended
STATE-AFA	6	Proposed Rule	Implementation of chapter 18 of NAFTA and sections 341 and 342 of the North American Free Trade Implementation Act
<b>DEPARTMENT OF TRANSPORTATION</b>			
DOT-GST	0	Final Rule	Ten reporting for individuals with disabilities
DOT-GST	0	Final Rule	Management information system (MIS) for workplace drug testing programs (common rule)
DOT-GST	13	Final Rule	Prevention of alcohol misuse in the aviation, train, motor carrier, railroad, and pipeline industries, common preamble
DOT-GST	7	Proposed Rule	Procedures for workplace drug and alcohol testing programs, blood testing programs
DOT-GST	3	Final Rule	Random drug testing program
DOT-GST	3	Final Rule	Procedures for transportation workplace drug and alcohol testing programs
DOT-USCQ	12	Final Rule	Documentation of vessels, recording of instruments, fees
DOT-USCQ	28	Final Rule	Discharge removal equipment for vessels carrying oil
DOT-USCQ	35	Final Rule	Licensing of pilots, manning of vessels by pilots -- 94-060
DOT-USCQ	35	Proposed Rule	Security for passenger vessels and passenger ferries
DOT-USCQ	80	Proposed Rule	Collection of data on drug and alcohol testing of commercial vessel personnel
DOT-USCQ	9	Proposed Rule	Collection of data on drug and alcohol testing of commercial vessel personnel
DOT-USCQ	12	Proposed Rule	Collection of data on drug and alcohol testing of commercial vessel personnel
DOT-USCQ	17	Proposed Rule	Guest takes package rate methodology -- 92-072
DOT-FAM	0	Final Rule	Aviation program for personnel engaged in specific aviation activities, management information system
DOT-FAM	2	Final Rule	Manning and crewing of aircraft
DOT-FAM	6	Final Rule	Aviation program for personnel engaged in specific aviation activities
DOT-FAM	1	Proposed Rule	Aviation program for personnel engaged in specific aviation activities
DOT-FAM	1	Proposed Rule	Aviation program for personnel engaged in specific aviation activities
DOT-FHWA	2	Final Rule	Qualification of drivers, medical examination
DOT-FHWA	34	Final Rule	Management and monitoring systems
DOT-FHWA	34	Final Rule	Management and monitoring systems
DOT-FHWA	3	Final Rule	Statewide planning, metropolitan planning
DOT-FHWA	42	Final Rule	Private motor carriers of passengers
DOT-FHWA	0	Final Rule	Controlled substances testing, floor sleeping and reporting requirements
DOT-FHWA	6	Proposed Rule	Controlled substances testing, floor sleeping and reporting requirements
DOT-FHWA	1	Final Rule	Controlled substances and alcohol use and testing
DOT-FHWA	1	Final Rule	Controlled substances and alcohol use and testing
DOT-NHTSA	35	Proposed Rule	Motor vehicle content labeling -- 48 CFR part 353
DOT-NHTSA	11	Proposed Rule	Determination of effectiveness, highway safety programs
DOT-NHTSA	1	Proposed Rule	Controlled substances testing, floor sleeping and reporting requirements
DOT-NHTSA	1	Proposed Rule	Controlled substances testing, floor sleeping and reporting requirements
DOT-NHTSA	14	Proposed Rule	Light Truck Fuel Economy Standards, model years 1996-2000
DOT-NHTSA	14	Final Rule	Light Truck Fuel Economy Standards, model years 1996-1997

\* Significance -- 1) Designated Significant by Agency, 2) Designated Significant by GSA  
Ext -- Extended at request of the agency

EXECUTIVE ORDER 12686 REVIEWS  
OCTOBER 1, 1993 --- MARCH 31, 1994  
RECEIVED SINCE OCTOBER 1, 1993

AGENCY SUBAGENCY	REVIEW STAGE OF TIME RULEMAKING (DAYS)	SIGNIFICANCE	TITLE
DOT-FRA	0	Final Rule	Amendments to alcohol/drug regulations, annual reporting requirements
DOT-FRA	15	Proposed Rule	Unitized training system
DOT-FRA	11	Final Rule	Unitized training system (CFR part 207)
DOT-FRA	11	Proposed Rule	Amendments to alcohol/drug regulations, alcohol testing
DOT-FRA	11	Proposed Rule	Maintenance—of very equipment, freight car safety standards
DOT-FTA	29	Proposed Rule	Rail fixed guideway systems, safety safety oversight
DOT-FTA	1	Final Rule	Prevention of alcohol abuse in transit operations
DOT-FTA	1	Final Rule	Prevention of alcohol abuse in transit operations
DOT-FTA	1	Final Rule	Obligation guarantees
DOT-MSA	16	Interim Final Rule	Management information system (MIS) standardized data collection and reporting of drug testing results
DOT-RSPA	0	Final Rule	Operation and maintenance procedures for pipelines
DOT-RSPA	35	Final Rule	Alcohol release prevention program
DOT-RSPA	1	Final Rule	Alcohol release prevention program
DEPARTMENT OF THE TREASURY			
TREAS-QTS	0	Proposed Rule	Community Reinvestment Act regulations
TREAS-OCC	35	Proposed Rule	Lending limits
TREAS-OCC	1	Proposed Rule	Community Reinvestment Act
DEPARTMENT OF VETERANS AFFAIRS			
VA	87	Proposed Rule	Examinations
VA	17	Final Rule	Standards of ethical conduct and related responsibilities
VA	15	Final Rule	Loan guaranty: limited denial of participation in the loan guaranty program
VA	72	Proposed Rule	Claims based on chronic effects of exposure to vesicant agents
VA	27	Proposed Rule	VA medical services
VA	27	Proposed Rule	Veterans education, implementation of the Veterans' Benefits Act of 1992 and the National Defense Authorization Act for FY 1993 in the post-vietnam era veteran
VA	16	Final Rule	Veterans education, standardization of programs
VA	86	Proposed Rule	Claims based on exposure to ionizing radiation
VA	17	Final Rule	Reservists education, the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991 and the Montgomery GI bill selected reserve
VA	13	Final Rule	Loan guaranty: acceptance of partial payments, indemnification of default
VA	86	Proposed Rule	To amend the loan guaranty for beneficiaries who are in receipt of pension
VA	78	Final Rule	Disease associated with exposure to certain herbicide agents, multiple myeloma and respiratory cancers
VA	51	Proposed Rule	Loan guaranty: implementation of Public Law 102-547
VA	83	Proposed Rule	Loss of duty
VA	49	Proposed Rule	Loan guaranty: implementation of Public Law 102-547
VA	25	Proposed Rule	Loss of duty and vocational rehabilitation and counseling programs -- VA Acquisition Regulation (VAAR) part 871
VA	14	Final Rule	Disease associated with exposure to certain herbicide agents
VA	14	Final Rule	Procedural due process and appellate rights
VA	14	Final Rule	Procedural due process and appellate rights
VA	2	Proposed Rule	Reservists education: the Veterans Education and Employment Amendments of 1993, the Department of Defense Authorization Act, 1993, and the Montgomery GI bill
VA	15	Proposed Rule	Schedule for rating disabilities. Schedule of the car and other service organs

\* Significance --- 1) Designated Significant by Agency, 2) Designated Significant by OIRA

EXECUTIVE ORDER 12988 REVIEWS  
OCTOBER 1, 1993 -- MARCH 31, 1994  
RECEIVED SINCE OCTOBER 1, 1993

AGENCY/ SUBAGENCY	REVIEW TIME (DAYS)	STAGE OF RULEMAKING	SIGNIFICANCE	TITLE
<b>ENVIRONMENTAL PROTECTION AGENCY</b>				
EPA-OCEC	17	Final Rule		Simplification of EPA's process for treating Indian tribes as states, amendments to Indian fee rule -- 40 CFR parts 35 and 130
EPA-OCEC	17	Proposed Rule		Simplification of EPA's process for treating Indian tribes as states, proposed amendments -- 40 CFR parts 124, 131, 142, 143, 145, and 233
EPA-WATER	6	Proposed Rule	1	Analytical methods for regulated drinking water contaminants, national primary drinking water regulations
EPA-WATER	17	Proposed Rule	1	Water quality standards for surface waters of the Sacramento River, San Joaquin River, and San Francisco Bay and delta of the State of California
EPA-WATER	14	Proposed Rule	2	Water quality standards for surface waters of the Sacramento River, San Joaquin River, and San Francisco Bay and delta of the State of California
EPA-WATER	81	Final Rule	1	Combined sewer overflow (CSO) control policy
EPA-WATER	51	Proposed Rule	1	Pesticide chemicals point source category, formulating, packaging, and repackaging sub-categories, effluent limitations guidelines and NSPS
EPA-SWER	49	Final Rule	1	List of regulated substances and thresholds for accidental release prevention, requirements for petitions under section 112(f) of the Clean Air Act as amended
EPA-SWER	34	Proposed Rule	1	Accidental release prevention, requirements for petitions under section 112(f) of the Clean Air Act as amended
EPA-SWER	34	Proposed Rule	2	Hazardous waste management system, California production identification and listing of hazardous waste and CERCLA hazardous substance designation & reportable
EPA-SWER	17	Final Rule	2	Underground storage tank financial responsibility requirements, 1998 compliance deadlines for tributary-owned underground storage tanks (UST) on Indian lands trust
EPA-SWER	20	Proposed Rule	2	Standards for the management of specific hazardous wastes, amendment to subpart c, recyclable materials used in a manner constituting disposal
EPA-SWER	11	Final Rule	2	National priorities list for uncontrolled hazardous waste sites
EPA-AR	7	Final Rule		Protection of atmospheric ozone, Federal procurement regulation -- 40 CFR part 82, SAN 2899
EPA-AR	36	Proposed Rule		Labeling supplemental proposal -- 40 CFR part 82, SAN 3348
EPA-AR	28	Final Rule	1	Ohio miscellaneous VOC BACT 1 and 11 regulations -- SAN 3376, CH-10-5677
EPA-AR	50	Proposed Rule	1	Criteria and procedures for determining conformity to State or Federal implementation plans of transportation plans, programs, and projects funded or approved
EPA-AR	50	Proposed Rule	2	National emission standards for hazardous air pollutants for source category gasoline distribution (stage 1) -- SAN 2526
EPA-AR	18	Final Rule	2	Supplemental rule for the implementation of the Clean Air Act, California Air Resources Board, California Air Resources Board, California Air Resources Board
EPA-AR	14	Proposed Rule	2	Approval of State programs and delegation of Federal authorities -- 42 CFR part 63, subpart a, SAN 3142
EPA-AR	87	Proposed Rule	1	National emission standards for hazardous air pollutants for aluminum solvent cleaners -- SAN 2839
EPA-AR	28	Final Rule	1	Field citation program -- 40 CFR part 59, SAN 2937
EPA-AR	28	Final Rule	1	Accelerated phaseout of ozone depleting chemicals and listing and phaseout of Methyl Bromide
EPA-AR	81	Proposed Rule	1	Regulations governing construction, reconstruction, or modified major sources under Clean Air Act section 112(g) -- SAN 2841
EPA-AR	81	Proposed Rule	1	Regulations governing construction, reconstruction, or modified major sources under Clean Air Act section 112(g) -- SAN 2841
EPA-AR	3	Final Rule	2	Schedule for the promulgation of emission standards under section 112(f) of the Clean Air Act, the Clean Air Act section 112(f) -- SAN 2932
EPA-AR	0	Final Rule	1	Determining conformity of general Federal actions to State or Federal implementation plans
EPA-AR	27	Proposed Rule	1	Clean fuel fuel program, approval and limited design, SAN 3357, SIP-WY-3-1-3148
EPA-AR	13	Final Rule	2	Clean fuel fuel program, definitions -- SAN 3072
EPA-AR	90	Final Rule	2	Promulgation of state regulations for nonroad engine and vehicle standards
EPA-AR	1	Proposed Rule	1	Regulation of fuels and fuel additives -- renewable oxygenate requirement for reformulated gasoline
EPA-AR	1	Proposed Rule	1	Fuel and fuel additives -- standards for reformulated gasoline
EPA-AR	87	Final Rule	1	Fuel and fuel additives -- standards for reformulated gasoline
EPA-AR	14	Final Rule	2	Acid rain HCl regulations under title IV of the Clean Air Act amendments of 1990
EPA-AR	14	Final Rule	2	Model standards and techniques for control of radon in new buildings, proposed guidance document, not a rulemaking -- SAN 2975
EPA-AR	18	Final Rule	2	Reconstruction for OMI Electromotive Division -- IL-1220-2765, SAN 3399
EPA-AR	63	Proposed Rule	2	National emission standards for hazardous air pollutants for Ethylene Oxide commercial sterilization and fumigation operations -- SAN 2484
EPA-AR	72	Final Rule	2	Standards for emissions from natural gas-fueled and liquefied petroleum gas-fueled motor vehicles and motor vehicle engines and certification procedures for repair
EPA-AR	56	Final Rule	2	Standards for emissions from natural gas-fueled and liquefied petroleum gas-fueled motor vehicles and motor vehicle engines and certification procedures for repair
EPA-AR	56	Final Rule	2	National ambient air quality primary standards for Carbon Monoxide, final decision -- SAN 2702
EPA-AR	65	Proposed Rule	1	Emission standards for new motor vehicle light-duty trucks and below 19 blowtires, control of air pollution
EPA-AR	13	Final Rule	1	Control of air pollution from new motor vehicles and new motor vehicle engines, relating emission regulations for light-duty vehicles & trucks & heavy-duty vehicles
EPA-AR	27	Final Rule	2	Significant new alternatives policy (SNAP) program -- SAN 2991 -- title VI of the Clean Air Act amendments of 1990
EPA-AR	28	Proposed Rule	2	National emission standards for hazardous air pollutants for light-duty trucks and below 19 blowtires, control of air pollution
EPA-AR	0	Proposed Rule	1	Options for national emission standards for hazardous air pollutants for light-duty trucks and below 19 blowtires, control of air pollution -- 40 CFR part 63, subpart a, SAN 2918
EPA-AR	0	Proposed Rule	1	California Federal implementation plans for Sacramento, Ventura, and the South Coast under the Clean Air Act -- section 110(c)
EPA-AR	5	Final Rule	1	Economic incentive program rules -- SAN 2904

\* Significance -- 1) Designated Significant by Agency, 2) Designated Significant by OIRA  
Ext -- Extended at request of the agency



EXECUTIVE ORDER 12988, REVIEWS  
OCTOBER 1, 1993 -- MARCH 31, 1994  
RECEIVED SINCE OCTOBER 1, 1993

AGENCY/ SUBAGENCY	REVIEW TIME (DAYS)	STAGE OF RULEMAKING	SIGNIFICANCE	TITLE
EPA--OPPTS	61	Proposed Rule	1	Emergency Planning and Community Right-to-Know Act, section 313 proposed additional chemicals -- 40 CFR 372.65
EPA--OPPTS	17	Final Rule	1	Added 2 chemical substances to the list of toxic chemicals under section 313 of the Emergency Planning and Community Right-to-Know Act
EPA--OPPTS	61	Proposed Rule	1	Amendment to the Hazardous Waste Manifest Regulations (40 CFR 166) to require the transporter to report under section 313 of the Emergency Planning and Community Right-to-Know Act
EPA--OPPTS	70	Proposed Rule	2	Provision of lead hazard information pamphlet before renovation of target housing
				Fishinganker -- TSCA section 6
OFFICE OF MANAGEMENT AND BUDGET				
OMB	108	Final Rule	Ext	Application of cost accounting standards board regulations to educational institutions -- 48 CFR parts 9901, 9905
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION				
NASA	1	Final Rule	1	NASA far supplement synthesizing requirements to implement FAR 90--20, expedited implementation of NFAT
NASA	18	Final Rule	2	Prescribe the major system acquisition process
NASA	22	Proposed Rule	2	Improve the major system acquisition process
NASA	20	Final Rule	2	Improve the major system acquisition process
				Performance-based contracting
CORPORATION FOR NATIONAL AND COMMUNITY SERVICE				
CNCS	1	Proposed Rule		Corporation grant programs and support and investment activities
CNCS	12	Final Rule		Corporation for National and Community Service: requirements for State commissions on national and community service
CNCS	22	Proposed Rule		Corporation for National and Community Service: requirements for State commissions on national and community service
CNCS	36	Proposed Rule		Uniform administrative requirements for grants and cooperative agreements to State and local governments, governmentwide debarment and suspension requirements
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION				
EEOC	27	Final Rule		Collection of debts by Federal tax refund offset
FEDERAL EMERGENCY MANAGEMENT AGENCY				
FEMA	44	Proposed Rule		National flood insurance program, insurance coverage and rates, criteria for land management, use, identification, and mapping of flood control restoration zones
FEMA	6	Proposed Rule		National flood insurance program, insurance rates
GENERAL SERVICES ADMINISTRATION				
GSA	35	Final Rule		Aviation, transportation, and motor vehicles -- FPMR subchapter G amendment
GSA	66	Final Rule		Insertion amendment to FPMR to implement provisions of Executive Order 12645 requiring agencies to purchase energy efficient computer equipment
GSA	0	Final Rule		Maximum per diem rates -- Federal Travel Regulation (FTR), amendment 33
GSA	29	Final Rule	2	Maximum per diem rates -- Federal Travel Regulation (FTR), amendment 33
GSA	37	Final Rule	1	Maximum per diem rates -- Federal Travel Regulation (FTR), amendment 33
GSA	15	Proposed Rule	2	Identification of energy-efficient office equipment and supplies -- 48 CFR 552.216-74
GSA	4	Final Rule	1	Placement of orders -- 48 CFR 552.216-73, ordering information -- 48 CFR 552.216-74
GSA	40	Final Rule	1	Changes to the FTR maximum per diem rates -- Federal Travel Regulations (FTR), amendment 34
GSA	40	Final Rule	2	Aviation, transportation, and motor vehicles -- Federal Property Management Regulations, subchapter G, control no. 93-43
GSA	23	Proposed Rule	2	Aviation, transportation, and motor vehicles -- Federal Property Management Regulations, subchapter G, control no. 93-43

\* Significance -- 1) Designated Significant by Agency, 2) Designated Significant by OIRA

Fri -- Extended at request of the agency

EXECUTIVE ORDER 12066 REVIEWS  
OCTOBER 1, 1994 - OCTOBER 1, 1995  
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AGENCY/ SUBAGENCY	REVIEW STAGE OF RULING/NO TIME (DAYS)	SIGNIFICANCE	TITLE
<b>NATIONAL ARCHIVES AND RECORDS ADMINISTRATION</b>			
NASA	0 Proposed Rule	1	Electronic mail systems
<b>UNITED STATES INFORMATION AGENCY</b>			
USIA	7 Interim Final Rule		Educational, scientific, and cultural research world-wide free flow (report - import) of audio visual materials -- -- rulemaking 200
USIA	1 Interim Final Rule		Camp counselor strategies -- -- rulemaking ch. 102
<b>INSTITUTE OF MUSEUM SERVICES</b>			
IMS	10 Final Rule		Institute of Museum Services, technical assistance grants
<b>APPRAISAL SUBCOMMITTEE OF THE FFEC</b>			
FFEC	70 Proposed Rule		Freedom of Information Act, requests for confidential treatment of information subject to FOIA and petitions for the issuance, amendment, and repeal of a rule
<b>NATIONAL SCIENCE FOUNDATION</b>			
NSF	64 Final Rule		Investigator financial disclosure policy
NSF	19 Final Rule		Salary offset
NSF	0 Final Rule		Claims collection and administrative offset
<b>OFFICE OF PERSONNEL MANAGEMENT</b>			
OPM	70 Proposed Rule		Temporary, term, and excepted service employment
OPM	27 Proposed Rule		Recompensation of congressional annuitants after reemployment
OPM	19 Final Rule		Prevailing rate systems, Campaign, Illinois, MAF wage area
OPM	31 Final Rule		OPM's review of the Federal Personnel Manual, Part 1, Chapter 100, Subchapter 100-10, 100-10.1, 100-10.2, 100-10.3, 100-10.4, 100-10.5, 100-10.6, 100-10.7, 100-10.8, 100-10.9, 100-10.10, 100-10.11, 100-10.12, 100-10.13, 100-10.14, 100-10.15, 100-10.16, 100-10.17, 100-10.18, 100-10.19, 100-10.20, 100-10.21, 100-10.22, 100-10.23, 100-10.24, 100-10.25, 100-10.26, 100-10.27, 100-10.28, 100-10.29, 100-10.30, 100-10.31, 100-10.32, 100-10.33, 100-10.34, 100-10.35, 100-10.36, 100-10.37, 100-10.38, 100-10.39, 100-10.40, 100-10.41, 100-10.42, 100-10.43, 100-10.44, 100-10.45, 100-10.46, 100-10.47, 100-10.48, 100-10.49, 100-10.50, 100-10.51, 100-10.52, 100-10.53, 100-10.54, 100-10.55, 100-10.56, 100-10.57, 100-10.58, 100-10.59, 100-10.60, 100-10.61, 100-10.62, 100-10.63, 100-10.64, 100-10.65, 100-10.66, 100-10.67, 100-10.68, 100-10.69, 100-10.70, 100-10.71, 100-10.72, 100-10.73, 100-10.74, 100-10.75, 100-10.76, 100-10.77, 100-10.78, 100-10.79, 100-10.80, 100-10.81, 100-10.82, 100-10.83, 100-10.84, 100-10.85, 100-10.86, 100-10.87, 100-10.88, 100-10.89, 100-10.90, 100-10.91, 100-10.92, 100-10.93, 100-10.94, 100-10.95, 100-10.96, 100-10.97, 100-10.98, 100-10.99, 100-10.100, 100-10.101, 100-10.102, 100-10.103, 100-10.104, 100-10.105, 100-10.106, 100-10.107, 100-10.108, 100-10.109, 100-10.110, 100-10.111, 100-10.112, 100-10.113, 100-10.114, 100-10.115, 100-10.116, 100-10.117, 100-10.118, 100-10.119, 100-10.120, 100-10.121, 100-10.122, 100-10.123, 100-10.124, 100-10.125, 100-10.126, 100-10.127, 100-10.128, 100-10.129, 100-10.130, 100-10.131, 100-10.132, 100-10.133, 100-10.134, 100-10.135, 100-10.136, 100-10.137, 100-10.138, 100-10.139, 100-10.140, 100-10.141, 100-10.142, 100-10.143, 100-10.144, 100-10.145, 100-10.146, 100-10.147, 100-10.148, 100-10.149, 100-10.150, 100-10.151, 100-10.152, 100-10.153, 100-10.154, 100-10.155, 100-10.156, 100-10.157, 100-10.158, 100-10.159, 100-10.160, 100-10.161, 100-10.162, 100-10.163, 100-10.164, 100-10.165, 100-10.166, 100-10.167, 100-10.168, 100-10.169, 100-10.170, 100-10.171, 100-10.172, 100-10.173, 100-10.174, 100-10.175, 100-10.176, 100-10.177, 100-10.178, 100-10.179, 100-10.180, 100-10.181, 100-10.182, 100-10.183, 100-10.184, 100-10.185, 100-10.186, 100-10.187, 100-10.188, 100-10.189, 100-10.190, 100-10.191, 100-10.192, 100-10.193, 100-10.194, 100-10.195, 100-10.196, 100-10.197, 100-10.198, 100-10.199, 100-10.200, 100-10.201, 100-10.202, 100-10.203, 100-10.204, 100-10.205, 100-10.206, 100-10.207, 100-10.208, 100-10.209, 100-10.210, 100-10.211, 100-10.212, 100-10.213, 100-10.214, 100-10.215, 100-10.216, 100-10.217, 100-10.218, 100-10.219, 100-10.220, 100-10.221, 100-10.222, 100-10.223, 100-10.224, 100-10.225, 100-10.226, 100-10.227, 100-10.228, 100-10.229, 100-10.230, 100-10.231, 100-10.232, 100-10.233, 100-10.234, 100-10.235, 100-10.236, 100-10.237, 100-10.238, 100-10.239, 100-10.240, 100-10.241, 100-10.242, 100-10.243, 100-10.244, 100-10.245, 100-10.246, 100-10.247, 100-10.248, 100-10.249, 100-10.250, 100-10.251, 100-10.252, 100-10.253, 100-10.254, 100-10.255, 100-10.256, 100-10.257, 100-10.258, 100-10.259, 100-10.260, 100-10.261, 100-10.262, 100-10.263, 100-10.264, 100-10.265, 100-10.266, 100-10.267, 100-10.268, 100-10.269, 100-10.270, 100-10.271, 100-10.272, 100-10.273, 100-10.274, 100-10.275, 100-10.276, 100-10.277, 100-10.278, 100-10.279, 100-10.280, 100-10.281, 100-10.282, 100-10.283, 100-10.284, 100-10.285, 100-10.286, 100-10.287, 100-10.288, 100-10.289, 100-10.290, 100-10.291, 100-10.292, 100-10.293, 100-10.294, 100-10.295, 100-10.296, 100-10.297, 100-10.298, 100-10.299, 100-10.300, 100-10.301, 100-10.302, 100-10.303, 100-10.304, 100-10.305, 100-10.306, 100-10.307, 100-10.308, 100-10.309, 100-10.310, 100-10.311, 100-10.312, 100-10.313, 100-10.314, 100-10.315, 100-10.316, 100-10.317, 100-10.318, 100-10.319, 100-10.320, 100-10.321, 100-10.322, 100-10.323, 100-10.324, 100-10.325, 100-10.326, 100-10.327, 100-10.328, 100-10.329, 100-10.330, 100-10.331, 100-10.332, 100-10.333, 100-10.334, 100-10.335, 100-10.336, 100-10.337, 100-10.338, 100-10.339, 100-10.340, 100-10.341, 100-10.342, 100-10.343, 100-10.344, 100-10.345, 100-10.346, 100-10.347, 100-10.348, 100-10.349, 100-10.350, 100-10.351, 100-10.352, 100-10.353, 100-10.354, 100-10.355, 100-10.356, 100-10.357, 100-10.358, 100-10.359, 100-10.360, 100-10.361, 100-10.362, 100-10.363, 100-10.364, 100-10.365, 100-10.366, 100-10.367, 100-10.368, 100-10.369, 100-10.370, 100-10.371, 100-10.372, 100-10.373, 100-10.374, 100-10.375, 100-10.376, 100-10.377, 100-10.378, 100-10.379, 100-10.380, 100-10.381, 100-10.382, 100-10.383, 100-10.384, 100-10.385, 100-10.386, 100-10.387, 100-10.388, 100-10.389, 100-10.390, 100-10.391, 100-10.392, 100-10.393, 100-10.394, 100-10.395, 100-10.396, 100-10.397, 100-10.398, 100-10.399, 100-10.400, 100-10.401, 100-10.402, 100-10.403, 100-10.404, 100-10.405, 100-10.406, 100-10.407, 100-10.408, 100-10.409, 100-10.410, 100-10.411, 100-10.412, 100-10.413, 100-10.414, 100-10.415, 100-10.416, 100-10.417, 100-10.418, 100-10.419, 100-10.420, 100-10.421, 100-10.422, 100-10.423, 100-10.424, 100-10.425, 100-10.426, 100-10.427, 100-10.428, 100-10.429, 100-10.430, 100-10.431, 100-10.432, 100-10.433, 100-10.434, 100-10.435, 100-10.436, 100-10.437, 100-10.438, 100-10.439, 100-10.440, 100-10.441, 100-10.442, 100-10.443, 100-10.444, 100-10.445, 100-10.446, 100-10.447, 100-10.448, 100-10.449, 100-10.450, 100-10.451, 100-10.452, 100-10.453, 100-10.454, 100-10.455, 100-10.456, 100-10.457, 100-10.458, 100-10.459, 100-10.460, 100-10.461, 100-10.462, 100-10.463, 100-10.464, 100-10.465, 100-10.466, 100-10.467, 100-10.468, 100-10.469, 100-10.470, 100-10.471, 100-10.472, 100-10.473, 100-10.474, 100-10.475, 100-10.476, 100-10.477, 100-10.478, 100-10.479, 100-10.480, 100-10.481, 100-10.482, 100-10.483, 100-10.484, 100-10.485, 100-10.486, 100-10.487, 100-10.488, 100-10.489, 100-10.490, 100-10.491, 100-10.492, 100-10.493, 100-10.494, 100-10.495, 100-10.496, 100-10.497, 100-10.498, 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EXECUTIVE ORDER 12988 REVIEWS  
OCTOBER 1, 1993 -- MARCH 31, 1994  
RECEIVED SINCE OCTOBER 1, 1993

AGENCY/ SUBAGENCY	REVIEW TIME (DAYS)	STAGE OF RULEMAKING	SIGNIFICANCE	TITLE
<b>OFFICE OF GOVERNMENT ETHICS</b>				
OGE	2	Final Rule		Executive branch financial disclosure, qualified trusts, and certificates of divestiture, amendment
<b>RAILROAD RETIREMENT BOARD</b>				
RRB	50	Proposed Rule		Availability of information to the public
RRB	45	Final Rule	1	Relief of employers' reports and responsibilities
RRB	34	Final Rule	1	Duration of normal extended benefits
RRB	34	Proposed Rule	1	Assessment or waiver of interest, penalties, and administrative costs with respect to collection of certain debts
RRB	31	Final Rule	1	Representative payment
<b>SMALL BUSINESS ADMINISTRATION</b>				
SBA	59	Proposed Rule		Amendments to the amount of flood insurance coverage required of recipients of certain SBA assistance
SBA	21	Final Rule		Physical disaster and economic injury loans, redesigning
SBA	34	Proposed Rule		Leverage, regulatory exemptions for non-leveraged licensees, Small Business Investment Companies
SBA	76	Proposed Rule		Business economic assistance, business loans
SBA	85	Proposed Rule		Business loan policy, media policy rule
SBA	23	Final Rule		Minority small business and capital ownership development, miscellaneous amendments
SBA	0	Interim Final Rule		Disaster physical disaster and economic injury loans
SBA	30	Proposed Rule		Disaster physical disaster and economic injury loans
SBA	7	Interim Final Rule		Disaster physical disaster and economic injury loans, defining source of employment
SBA	16	Interim Final Rule		Disaster physical disaster and economic injury loans, defining source of employment
SBA	18	Interim Final Rule		Small Business Investment Companies, leverage, participating securities, conditions affecting good standing of licensees
SBA	11	Interim Final Rule		Small Business Investment Companies, small business size standards
SBA	13	Proposed Rule		Small Business Investment Companies, implementation of P. L. 102-368 and other matters
SBA	0	Interim Final Rule		Small business size standards, business policy rule
SBA	0	Interim Final Rule		Small business size standards, business adjusted size standards
<b>FEDERAL ACQUISITION REGULATIONS</b>				
FAR	36	Proposed Rule	1	Electronic contracting
FAR	71	Final Rule		Exemptions from cost or pricing data
FAR	11	Proposed Rule	1	Electronic contracting
FAR	11	Final Rule	1	Expedited implementation of the North American Free Trade Agreement (NAFTA) Implementation Act of 1993
FAR	40	Proposed Rule	2	Physical contract management
FAR	21	Proposed Rule	2	Subcontracting plans -- FAR Case 92-16

\* Significance -- 1) Designated Significant by Agency, 2) Designated Significant by OIRA  
Ext -- Extended at request of the agency

TABLE 1

EXECUTIVE ORDER REVIEWS  
OCTOBER 1, 1993 – MARCH 31, 1994  
RECEIVED AFTER OCTOBER 1, 1993

AGENCY	NUMBER OF REVIEWS			ACTIONS TAKEN							AVERAGE REVIEW TIME		
	NOT		TOTAL	1	2	3	5	9	12	ECON	NOT		ALL
	ECON	ECON									ECON	ECON	
TOTAL	SIG	SIG									SIG	SIG	
%	63	515	578	348	177	26	11	0	16		24	26	26
	10.9%	89.1%		60.2%	30.6%	4.5%	1.9%	0.0%	2.8%				
USDA	11	83	94	65	20	5	2	0	2		17	20	19
DOC	0	42	42	29	11	2	0	0	0		NA	16	16
DOD	0	8	8	1	5	2	0	0	0		NA	44	44
ID	2	23	25	3	19	3	0	0	0		7	31	29
XOE	1	5	6	3	3	0	0	0	0		76	51	56
HHS	7	119	126	93	24	5	4	0	0		37	27	27
HUD	3	22	25	15	8	2	0	0	0		55	30	33
DOI	1	33	34	25	9	0	0	0	0		4	23	23
DOJ	0	15	15	15	0	0	0	0	0		NA	17	17
DOL	1	1	2	0	2	0	0	0	0		9	20	15
STATE	0	6	6	5	1	0	0	0	0		NA	17	17
DOT	14	30	44	21	23	0	0	0	0		6	21	15
TREAS	2	1	3	1	2	0	0	0	0		1	35	12
VA	0	21	21	15	4	2	0	0	0		NA	40	40
EPA	14	39	53	14	25	0	0	0	14		36	36	36
CNCS	1	3	4	0	4	0	0	0	0		22	23	23
EEOC	0	1	1	1	0	0	0	0	0		NA	27	27
FAR	3	3	6	3	1	2	0	0	0		39	23	31
FEMA	0	2	2	0	2	0	0	0	0		NA	25	25
FFIEC	0	1	1	0	1	0	0	0	0		NA	70	70
GSA	0	9	9	6	3	0	0	0	0		NA	36	36
IMS	0	1	1	1	0	0	0	0	0		NA	10	10
NARA	0	1	1	1	0	0	0	0	0		NA	116	116
NASA	0	4	4	4	0	0	0	0	0		NA	15	15
NSF	0	3	3	2	1	0	0	0	0		NA	84	84
OGE	0	1	1	1	0	0	0	0	0		NA	2	2
OMB	0	1	1	0	1	0	0	0	0		NA	106	106
OPM	0	17	17	13	2	2	0	0	0		NA	19	19
PRR	0	5	5	0	0	0	5	0	0		NA	39	39
SBA	3	13	16	9	6	1	0	0	0		15	42	36
USIA	0	2	2	2	0	0	0	0	0		NA	4	4

TABLE 2

EXECUTIVE ORDER REVIEWS  
OCTOBER 1, 1993 - MARCH 31, 1994  
RECEIVED PRIOR TO OCTOBER 1, 1993

AGENCY	NUMBER OF REVIEWS			ACTIONS TAKEN								AVERAGE REVIEW TIME		
	NOT											NOT		
	ECON	ECON										ECON	ECON	
	S/G	S/G	TOTAL	"	1	2	3	5	9	12		S/G	S/G	ALL
TOTAL	8	167	175	86	60	24	1	2	2		108	74	76	
%	4.6%	95.4%		49.1%	34.3%	13.7%	0.6%	1.1%	1.1%					
USDA	2	26	28	20	6	2	0	0	0		148	55	82	
DOC	1	13	14	9	4	1	0	0	0		126	44	50	
DOD	0	2	2	0	0	2	0	0	0		NA	99	99	
ED	0	9	9	0	6	3	0	0	0		NA	86	86	
DOE	0	4	4	2	2	0	0	0	0		NA	121	121	
HHS	1	39	40	25	6	6	1	2	0		104	72	73	
HUD	1	9	10	4	4	2	0	0	0		42	84	80	
DOI	0	7	7	4	2	1	0	0	0		NA	82	82	
DOJ	0	0	0	0	0	0	0	0	0		NA	NA	NA	
DOL	0	0	0	0	0	0	0	0	0		NA	NA	NA	
STATE	0	0	0	0	0	0	0	0	0		NA	NA	NA	
DOT	1	6	7	1	4	2	0	0	0		180	149	151	
TREAS	0	3	3	1	2	0	0	0	0		NA	81	81	
VA	0	8	8	8	0	2	0	0	0		NA	119	119	
EPA	2	14	16	1	13	0	0	0	2		87	88	94	
AID	0	1	1	0	1	0	0	0	0		NA	36	36	
EEOC	0	1	1	0	0	1	0	0	0		NA	205	205	
FEMA	0	2	2	0	2	0	0	0	0		NA	51	51	
GSA	0	9	9	5	4	0	0	0	0		NA	36	36	
NARA	0	1	1	0	1	0	0	0	0		NA	116	116	
NASA	0	4	4	2	1	1	0	0	0		NA	47	47	
NSF	0	2	2	1	0	1	0	0	0		NA	88	88	
OPM	0	5	5	4	1	0	0	0	0		NA	32	32	
USIA	0	1	1	1	0	0	0	0	0		NA	11	11	
ALL OTHER	0	1	1	0	1	0	0	0	0		NA	74	74	

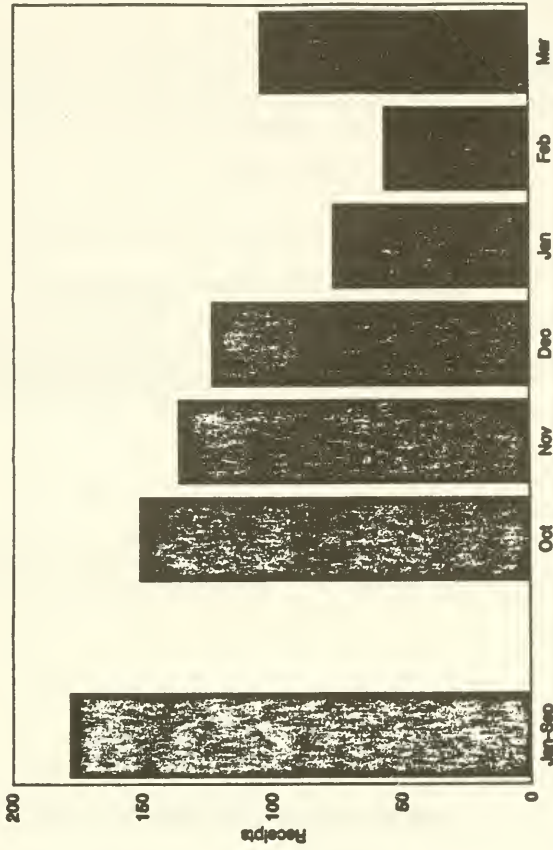


## TABLE 3

EXECUTIVE ORDER REVIEWS  
REVIEWS PENDING ON APRIL 1, 1994

AGENCY	1 -- 30	31 -- 60	61 -- 90	OVER 90	TOTAL
<b>TOTAL</b>	<b>45</b>	<b>13</b>	<b>8</b>	<b>2</b>	<b>68</b>
USDA	10	0	0	1	11
DOC	2	0	0	0	2
DOD	2	0	0	0	2
ED	2	1	4	0	7
DOE	0	0	0	0	0
HHS	6	4	1	0	11
HUD	8	1	0	0	9
DOI	0	0	1	0	1
DOJ	1	0	0	0	1
DOL	0	0	0	0	0
STATE	0	0	0	0	0
DOT	2	0	0	0	2
TREAS	0	0	0	0	0
VA	2	0	0	0	2
EPA	7	3	1	1	12
ACTION	1	0	0	0	1
ATBCB	0	0	1	0	1
FAR	0	1	0	0	1
JMMFF	0	1	0	0	1
OPM	2	2	0	0	4

# EXECUTIVE ORDER 12866 RECEIPTS FROM AGENCIES



Note: Pre EO 12866 period is January - September 1993 average

Note: EO 12866 period begins October 1993

ENSURING ACCOUNTABILITY FOR DEVELOPING  
WELL-FOUNDED FEDERAL REGULATIONS

AN INITIAL "REPORT CARD" ON COMPLIANCE WITH KEY DIRECTIVES  
OF THE REGULATORY EXECUTIVE ORDER (E.O. 12866)

APRIL 1995

**The Institute for Regulatory Policy**

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## Federal Focus, Inc.

Federal Focus, Inc. is a private, non-profit 501(c)(3) educational foundation dedicated to research and education on federal governmental policy issues. It was incorporated in the District of Columbia in 1986. Within Federal Focus there are four separate organizational entities:

- The Institute for Regulatory Policy
- The Health Policy Institute
- The Center for Epidemiological Studies
- The Center for the Study of Environmental Endocrine Effects

Preparation of this report was the work of The Institute for Regulatory Policy. The Institute's most recent prior publication on related subject matter was *A Blueprint For Constructing A Credible Environmental Risk Assessment Policy In The 104th Congress* (October 1994).

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**EXECUTIVE SUMMARY**

- Recently, there has been a great deal of public debate over excessive Federal regulation.
- One way in which the Federal Government has attempted to restrict the number and burdens of regulations has been through Presidential Executive orders prescribing standards for their development and assigning the Office of Management and Budget to enforce compliance. In late 1993, President Clinton issued his own Executive Order to replace previous ones.
- Since then, other mechanisms for curbing unnecessary regulatory burdens have been proposed. Congress has under consideration a number of bills prescribing requirements for regulations that would be judicially enforceable. (The Executive Order directives are not judicially enforceable.)
- Federal Focus examined whether the Executive Order mechanism is operating effectively, or whether, as some argue, judicial accountability is needed.
- As a means of analyzing this issue, Federal Focus reviewed a large number of EPA rulemaking notices published in the *Federal Register*.
- To obtain a measure of the degree of compliance exhibited by those rules, Federal Focus compiled a "Report Card" showing the number of rulemaking notices that demonstrated compliance with certain key directives of the Executive Order.
- The Report Card indicates that only a limited number of the rulemaking notices demonstrated compliance with those key directives.



April 1995

## ENSURING ACCOUNTABILITY IN DEVELOPING WELL-FOUNDED FEDERAL REGULATIONS:

### AN INITIAL "REPORT CARD" ON COMPLIANCE WITH KEY DIRECTIVES OF THE REGULATORY EXECUTIVE ORDER (E.O. 12866)

*"The importance of regulations in our society makes it imperative that the process by which they are developed and reviewed be characterized by integrity and accountability."<sup>1</sup>*

*"OIRA reviews only 'significant' rules . . . . [W]e neither track nor evaluate the extent to which the more routine but numerous regulations that are being issued by the agencies meet the principles of the Order."<sup>2</sup>*

*"The question remains, are the philosophy and principles of the Order being applied to the fullest extent? Are we really getting smarter regulation? This is difficult to answer because . . . there is no direct measure of performance that we can use. We do have anecdotes, however, suggesting that the Administration is producing smarter regulations . . . ."<sup>3</sup>*

#### ***The Executive Order***

On September 30, 1993, President Clinton issued Executive Order No. 12866 on "Regulatory Planning and Review" to replace a similar Executive order (No. 12291) that had been issued in 1981. The Order contains three core features:

- First, it establishes a Regulatory Philosophy and a set of twelve regulatory Principles to be followed by Federal agencies in considering development of new regulations, reviewing existing regulations, and setting regulatory priorities.

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<sup>1</sup> Report to President Clinton by OMB's Office of Information and Regulatory Affairs ("OIRA") on the first six months of implementation of E.O. 12866 (59 Fed.Reg. 24276, 24277, May 10, 1994).

<sup>2</sup> OIRA's one-year report to the President, at 4.

<sup>3</sup> *Id.* at 29.

- Second, it designates the Office of Information and Regulatory Affairs ("OIRA") in the White House Office of Management and Budget as having lead responsibility for reviewing "significant" regulatory actions (as defined in the Order) to ensure they are consistent with the Philosophy and Principles established by the Order. There are also provisions for having the President or Vice President resolve conflicts between OIRA and an agency.
- Third, it requires public disclosure of certain types of information concerning regulatory reviews conducted by OIRA.

### ***The Significance of the Executive Order in the Regulatory Reform Debate***

At present, there are numerous "regulatory reform" bills pending before Congress. With the exception of those that would impose a moratorium or provide for a Congressional veto of regulations, all of them contain regulatory philosophy and principles that to a large extent mirror those in President Clinton's Executive Order (and the Executive order it replaced). For example, they address the need for risk analysis and cost-benefit analysis and evaluation of alternative means of regulating in order to select the most cost-effective and least burdensome approach.

Despite these similarities, the legislative proposals have aroused considerable controversy. One of the contentious issues is how to ensure accountability for compliance with those similar philosophies and principles. Like all Executive orders, E.O. 12866 expressly excludes judicial review of compliance with its directives. On the other hand, most of the pending bills do not contain such a prohibition, or they expressly provide for some form of judicial review.

If it is clear that the Executive Order is operating as intended to compel Federal agencies to comply with its Philosophy and Principles, the need for judicial accountability could be considered lessened (although not necessarily obviated, since Executive orders can be readily modified or rescinded).

### ***The Purpose of the "Report Card"***

Under the Executive Order, OIRA is entrusted with responsibility for providing "meaningful guidance and oversight so that each agency's regulatory actions are consistent with

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applicable law, the President's priorities, and the principles set forth in this Executive Order and do not conflict with the policies or actions of another agency." Sec. 6(b).

OIRA's role is limited, however, to reviewing "significant" regulatory actions. To define "significant regulatory actions", the Executive Order uses various criteria, including criteria of economic significance. For example, a regulatory action is considered "significant" if it would impose costs of \$100 million or more annually or would have other "material" economic impacts. Consequently, as the Report Card indicates, OIRA reviews agency compliance for only a fraction of the substantive rules issued.

Since promulgation of the Order, OIRA has sent two six-months reports to the President on its implementation. As the quotations from those reports at the head of this paper acknowledge, however, to date neither OIRA nor any other entity has developed a means for clearly measuring and conveying to the public the extent to which the Federal regulatory agencies and OIRA are, or are not, complying with the Philosophy and Principles of the Executive Order, and the OIRA reports to the President have mainly provided anecdotal information suggesting some degree of compliance.

The purpose of the initial limited "Report Card" discussed and presented herein is to explore the use of a concise, objective format for periodically reporting on the extent to which agency rulemaking actions -- both those determined to be "significant" as defined in the Order and others -- appear to comply with certain key aspects of the Philosophy and Principles of the Order, and the extent to which OIRA is effectively enforcing the Order.

While this initial "report card" approach does not necessarily provide a definitive measure of compliance, we believe that it provides valuable insights into the degree to which current rulemaking indicates the effectiveness of the Executive Order. The Report Card has been prepared on the basis of rulemaking notices published in the *Federal Register*. As OIRA has pointed out in its reports to the President on this subject, the Order does not require that agencies demonstrate explicitly in their rulemaking notices that they have complied with the Order's precepts, yet OIRA believes it is desirable that the notices set forth the required analysis in order to allow for informed public comment.<sup>4</sup> In this regard, the "report card" approach set out in this paper has value not only in providing an indication of the extent of compliance with the Order, but also in indicating the extent to which agency rulemaking notices convey, or fail to convey, such information to the public and their elected officials.

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<sup>4</sup> OIRA report to the President on the first six months of implementation, 59 Fed. Reg. at 24292 2d col. (May 10, 1994).

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## **Methodology for the Report Card**

### **Scope of the Review**

The analysis in the Report Card covers all EPA notices of proposed and final rulemaking published in the *Federal Register* during the period from April 1 through September 30, 1994. This period represents the second six months of implementation of the Executive Order.

This period was chosen because the OIRA report on the first six months of implementation of the Order emphasized that there was an initial two- to three-month period when there were start-up difficulties. By the second six months, however, the OIRA report to the President indicated that the process had matured and initial implementation difficulties had been largely resolved. EPA was chosen as a representative agency because the OIRA reports indicated it was one of the agencies with the largest number of "significant" regulatory actions during this period, and because so much of the legislative debate has focused on EPA regulations.

A total of 510 EPA *Federal Register* rulemaking notices were examined manually. Of those, we considered 222 to be "substantive", meaning that they were not technical or administrative types of actions such as Clean Air Act State Implementation Plan ("SIP") approvals, minor amendments to previous rulemaking notices, solicitation of public comments, technical corrections, denials of petitions for stays, comment period extensions, reopening of comment periods, designations of air quality planning areas, and changes of address. The "substantive" rules examined included both those actions determined to be "significant" by the agency or OIRA for regulatory review purposes, and those that were not determined to be "significant".<sup>5</sup>

### **Criteria**

The first section of the Executive Order directs agencies to comply with more than a dozen specific regulatory Principles. Those Principles address mainly analytical requirements such as cost-benefit analysis and assessment of alternatives. Because the Order contains such explicit directives, it should be possible to determine the degree of compliance with those directives through the examination of rulemaking notices.

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<sup>5</sup> Out of the 288 "non-substantive" rulemaking notices, the bulk, 255, were proposed or final actions on SIPs.

It is important to note that the Executive Order Philosophy and Principles apply to all regulatory actions to the extent permitted by law and where applicable, not just to the "significant" regulatory actions reviewed by OIRA. As OIRA has noted in its reports to the President, the Executive Order itself does not provide a process for ensuring, or a means for measuring, compliance with the other regulatory actions which are not reviewed by OIRA. Additionally, there is no entity other than OIRA itself currently providing public information the effectiveness of OIRA's oversight with regard to "significant" actions. The purpose of the "report card" approach set out in this paper is to endeavor to fill both those gaps.

Several of the Principles and other portions of the Order address non-analytical matters such as inter-agency and public consultation, regulatory planning and priority setting, the procedures for OIRA review of "significant regulatory actions", and public disclosure of certain aspects of the review process. The initial Report Card in this paper addresses only five basic analytical requirements of the Order that appear in its Philosophy and various Principles. Those are:

1. Evaluation of the need for a regulation: This analytical requirement is contained in the first statement of the President's regulatory Philosophy and is the first of the Principles. The Philosophy states that "agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failure of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people." Principle 1 states that each agency "shall identify the problem it intends to address (including, where applicable, the failure of private markets or public institutions that warrant new agency action) as well as assess the significance of that problem."
2. Reasoned determination that benefits justify costs: Principle 6 states that agencies "shall . . . propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs."
3. Assessment of costs: The Philosophy states that "in deciding whether and how to regulate, agencies should assess all costs . . . of available regulatory alternatives . . . . Costs . . . shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures . . . ." Principle 6 states that agencies "shall assess . . . the costs . . .



of the intended regulation . . . ." In addition, Principle 11 states that agencies shall, in tailoring regulations to impose the least burden, take into account, to the extent practicable, "the costs of cumulative regulations".

4. Assessment of benefits: Principle 6 and the Philosophy state that agencies shall assess benefits in "quantifiable measures (to the fullest extent that these can be usefully measured) and qualitative measures . . . that are difficult to quantify, but nevertheless essential to consider."
5. Consideration of alternatives: The Philosophy states that agencies should "assess all costs and benefits of available regulatory alternatives". Principle 3 states that agencies "shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public." Principle 8 states that agencies "shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt." Principle 5 states that agencies "shall design . . . regulations in the most cost-effective manner to achieve the regulatory objective." Finally, Principle 11 states that agencies "shall tailor . . . regulations to impose the least burden on society . . . consistent with obtaining the regulatory objectives . . . ."

The Report Card also provides information on some actions taken by OIRA or the agency during the regulatory review process. This information has been included because it could be considered indicative of the degree to which OIRA is enforcing compliance with the Order when that information is compared with the other information in the Report Card.

In future Report Cards, we plan to extend the analysis to other timeframes and other agencies. We believe it would also be useful to include information indicating the extent to which the public disclosure provisions of the Order are providing useful information to the public on the regulatory review interactions between OIRA and the agencies.<sup>6</sup> Since

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<sup>6</sup> It should be noted, however, that while the Executive Order provides a regulatory policy and procedural role for the President and the Vice President, it is unlikely that the Report Card approach can provide information on interactions between the Office of the Vice President and outside parties or OIRA regarding regulatory actions. OIRA's reports and statements accompanying the release of the new

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the OIRA reports to the President emphasize the great amount of consultation and coordination occurring between OIRA and the agencies, and since it appears that the above report card criteria can provide some measure of the degree of compliance with the Executive Order, reporting on the degree of communication between OIRA and the agencies reflected in the rulemaking files could provide some additional measure of the degree to which OIRA is enforcing the Philosophy and Principles of the Order and is disclosing its communications with regulatory agencies to the public.

### Constraints

There were a number of constraints, some discussed above, regarding the methodology which may have influenced to some extent the numbers presented in the Report Card and its portrait:

- The review was limited to a six-month period.
- The review was limited to a single agency during that period.
- The review was limited to the information presented in the *Federal Register* rulemaking notices. We did not attempt to examine analytical documents that might reside in the agency's internal rulemaking dockets and which might contain additional information not presented in the notices.
- The specific statutes under which individual rules were issued may have precluded consideration of costs and benefits or the use of certain regulatory approaches, and therefore the agency may have omitted such analysis without expressly stating that it was precluded.

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Executive Order emphasized that one of its objectives was to dispel criticisms of "secrecy" and "favoritism" that had been aimed at the regulatory review process under the previous Executive Order. These appeared to be clearly allusions to assertions of inappropriate contacts between the Office of the Vice President, and of inappropriate intrusions into the regulatory process by that Office, during the previous Administration. However, the new Executive Order contains no provisions requiring disclosure of contacts between the Vice President's Office and outside parties or with OIRA on regulatory matters. The only disclosure requirements pertain to OIRA. OIRA must keep a record of any communications it has had with parties outside the Executive Branch, and, after a final regulatory action has been published, must "make available to the public all documents exchanged between OIRA and the agency during the review by OIRA under this section."

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**"Report Card" On E.O. 12866 Compliance:  
EPA Regulatory Actions April - September 1994**

	"significant" rules	other substantive rules
total <i>Federal Register</i> rulemaking notices	45	177
need for regulation evaluated	19	30
-- "required by" or "to interpret" the law	16	27
-- "compelling public need"	3	3
determination that benefits justified costs	6	0
costs (or savings) assessed	31	3
benefits quantified	15	4
alternatives considered	9	5
-- selected most cost-effective or least burdensome alternative	6	2
regulatory review action		
-- rejected/returned by OIRA <sup>7</sup>	0	n/a
-- withdrawn by regulatory agency <sup>8</sup>	2	n/a

### ***Findings***

- Of the total of 222 substantive rulemaking notices examined --
  - 6 determined that there was a "compelling public need" for regulating
  - 6 determined that the benefits justified the costs

<sup>7</sup> OIRA figure from one-year report to President, Table 1.

<sup>8</sup> *Id.*

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- 14 evaluated alternative approaches to regulating, and of those, 8 indicated that the most cost-effective or least burdensome approach was adopted.
- Of the overall total of 510 regulatory actions published, less than 10 percent were reviewed by OIRA under the Executive Order. On the other hand, 465 regulatory actions, including 177 substantive actions, were not reviewed by OIRA.
- None of the 45 rules reviewed by OIRA were returned to the agency for non-compliance.
- Of the 45 "significant" regulatory actions reviewed by OIRA --
  - 3 contained a determination of "compelling public need" (out of the 29 not "required by law")
  - 6 contained a determination that the benefits justified the costs (out of the 29 not "required by law")
  - 9 considered alternative approaches to regulating, and 6 of those stated that they had selected the most cost-effective or least burdensome alternative.
- Of the 177 other substantive rules not reviewed by OIRA --
  - 3 determined that there was a "compelling public need" (out of the 150 not "required by law")
  - 0 determined that the benefits justified the costs (out of the 150 not "required by law")
  - 5 considered alternatives, and out of those, 2 stated that they had adopted the most cost-effective or least burdensome approach.
- Although the Philosophy and Principles apply to all rules, there is no mechanism for monitoring compliance with the large number of rules not determined "significant" for purposes of OIRA review, and few of those reflected compliance.
- Few rulemaking notices, either for "significant" or for other substantive rules, contained a relatively comprehensive and organized presentation on compliance with the Philosophy and Principles of the Executive Order.

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***Request for Comments***

As noted above, we envision this Report Card to be the first in a series that will be expanded to include other agencies and timeframes. We also recognize that the Administration, Federal agencies, and other interested parties may be able to provide valuable comments for refining the approach. Accordingly, we encourage comment on the approach and will be actively seeking the views of Executive Branch officials.



**Final 60 Recommendations from the  
1995 White House Conference on Small Business**

**Taxation**

1. (1471 votes received -- 86.4%)

**A) The definition of an independent contractor must be clarified. Congress should recognize the legitimacy of an independent contractor.**

a) The 20 factor test is too subjective. The number of relevant factors should be narrowed with more definition guidelines for implementation. Realistic and consistent guidelines which require one of four criteria plus a written agreement. The criteria are (1) realization of profit or loss; (2) separate principle place of business; (3) making services available to the general public; or (4) paid on a commission basis.

b) Safe harbor provisions should be established which would protect the hiring business from the burdensome penalties currently being assessed by the IRS. De Minimis rules based on dollars paid, hours worked, years in business, and/or specified closed end projects should be established.

c) The IRS should eliminate back taxes for misclassification when Form 1099's are filed and there is no evidence of fraud.

d) Congress should specifically allow employers and independent contractors to provide joint technical training and to jointly utilize major specialized tools without jeopardy of reclassification of the independent contractor to employee status.

e) Changes and implementation processes should be formulated by a joint committee of legislators and small business people.

**Taxation**

2. (1444 votes received -- 84.8%)

**A) Small businesses typically rely on close personal relationships and customer service to compete for sales rather than expensive advertising campaigns. Expenditures for meals and entertainment are often an important part of this effort. The recent changes in the tax laws to disallow 50% of these expenditures for tax purposes has disproportionately increased the selling costs for many small businesses. Accordingly, Congress and the President shall enact legislation which will allow a tax deduction for 100% of the expenditures for meals and entertainment.**

*Regulation and Paperwork*

3. (1398 votes received -- 82.1%)

A) Congress should **amend the Regulatory Flexibility Act**, making it applicable to all federal agencies, including the Internal Revenue Service and the Department of Defense, to include all of the following:

a) Require cost benefit analysis, scientific benefit analysis and risk assessment on all new regulations and Internal Revenue Service interpretations.

b) Grant judicial review of regulations, providing courts the ability to stay harmful and costly regulations and to require agencies to rewrite them.

c) Require small business representation on policy making commissions, federal advisory and other federal commissions or boards, whose recommendations impact small businesses. Input from small business representatives should be required in any future legislation, policy development and regulation making and affecting small business.

d) With respect to all regulations involving small business, require negotiated rule making proceeding for adoption of all rules, with small business representing 50% of the negotiating panel.

*Taxation*

4. (1385 votes received -- 81.3%)

A) Congress should **repeal the Federal Estate, Gift and Generation Skipping tax laws**. There is currently legislation before the 104th Congress known as the Family Heritage Preservation Act as H.R.784/S.628 that would accomplish this. The negative effect on small business, and others, far exceeds the net income to government when all administrative costs to individuals, businesses, and government are considered.

*Human Capital**TIE VOTE*

5-6. (1371 votes received -- 80.5%)

A) Congress should **pass a health care package** that:

a) Creates tax deductible medical savings accounts.

b) Allows the formation of voluntary competitive health insurance purchasing cooperatives.

- c) Eliminates discriminatory health insurance practices such as redlining of cancellation of coverage for reasons other than non-payment or fraud.
- d) Allows for insurability once pre-existing conditions have been satisfied.
- e) Provides for portability of health insurance.
- f) Provides a full 100% deductibility of health care costs for all purchasers or limit the deduction to the same percentage for all purchasers.
- g) Provides medical malpractice reform.
- h) Prohibits any mandated coverage.
- i) Permits choice of health care insurer.

*Environmental Policy*

*TIE VOTE*

5-6. (1371 votes received -- 80.5%)

- A) Congress should ~~enact~~ reformation of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), to apply prospectively as well as retroactively to clean up sites in progress:
- a) Eliminate retroactive and strict liability prior to January 1, 1987 to prohibit liability for conduct that was not negligent, illegal, or in violation of regulations or permits at the time.
  - b) Require sound science and realistic risk assessments and cost/benefit analysis in assessing health and environmental hazards at waste sites.
  - c) Require sound science and realistic risk assessments and cost/benefit analysis in establishing cleanup standards. This would include realistic consideration of future uses of the site and actual environmental and health risks associated with such use.
  - d) Eliminate "re-openers" -- disallowing the reopening of the remediation process at a site or a company's contribution to the cleanup, after it has been closed.
  - e) Offer alternative funding strategies for cleanups.

f) Make greater use of de minimis and de micromis exemptions, requiring USEPA to identify all contributions to a site within a reasonable time period and making de minimis settlements available prior to litigation or enforcement actions.

g) Eliminate liability of fiduciaries and lending institutions who hold indicia of ownership primarily to protect security interest in property which is subject to the Act.

h) Eliminate joint and several liability for contamination.

i) Require potentially responsible parties (PRP's) to inform non-PRP's (parties not named by the USEPA) in contribution actions of availability of de minimis and/or de micromis settlements within a reasonable time period.

#### Human Capital

7. (1369 votes received -- 80.4%)

A) Congress should **repeal** current **disincentives** and burdensome regulations on qualified retirement plans and IRAs, and encourage adequate retirement savings and capital accumulation, including:

a) The adoption of a pension simplification bill, which contains the voluntary 401(k) safe harbors, such as H.R. 13 and H.R. 3419.

b) Raise compensation and benefit levels to 1992 limits and index for inflation.

c) Provide an exclusion from estate tax for retirement plan and IRA assets to avoid double taxation (they are already subject to income tax).

d) Eliminate the 15% Excise Tax of IRC Section 4980A.

e) Repeal the family aggregation rules of IRC Section 414(q)(6).

f) Reinstate deductible IRAs and expand to include non-employed spouses in full.

g) Expand SARSEPs to employers with up to 100 employees.

h) Repeal the minimum participation rules of IRC Section 401(a)(26) for defined contribution plans.

i) Lower the Qualified Separate Line of Business exception to 15 employees.

j) Increase the exceptions to the affiliated service group rules and include a minimum 20% ownership test for "A" organizations.

k) Repeal all defined benefit plan rules enacted after 1985.

h) Pension Plan Loans: Congress should amend section 72(p) of the IRC on plan loans to: 1) allow for plan loans by proprietorships and partnerships; 2) increase the plan loan balance to \$100,000; and 3) allow for balloon payments in lieu of quarterly payments if the loan is secured by the participant's account balance.

#### *Technology and the Information Revolution*

8. (1358 votes received -- 79.7%)

A) Congress and the Executive Branch should promote the rapid private-sector development of the **National/Global Information Infrastructure (NII/GII)** and protect all intellectual property transmitted over it. Congress and the U.S. Patent Office should also implement an enforceable and universal Intellectual Property (patent, trademark, and copyright) application with all members of World Trade Organization (GATT), while **maintaining "First to Invent."** This must also include the ability to police existing laws and treaties more judiciously, and to update definitions of Intellectual Property on a continuing basis.

Said branches of government should enact the following:

a) Ensure that legal protection of intellectual property rights, as well as fair access, is fully accorded with respect to products over the National Information Infrastructure (NII) and the Global Information Infrastructure (GII).

b) Incorporate the responsibility for Trademark and Copyright Appeals Litigation with the Federal Circuit Court of Appeals, as was done in the mid 1980's with patents.

c) Prevent premature disclosure through Freedom of Information Act (FOIA) access to proprietary Small Business Innovation Research (SBIR) technologies.

d) **Expeditionously and simultaneously** open all telecommunications markets to full and fair competition.

e) Make it possible for all providers to equally compete in offering one-stop shopping for telecommunications products and services; legislation should provide universal access.



f) Ensure privacy to all users from all parties, including the government (for example, the Clipper Chip or its successor), and security of the infrastructure.

g) Promote open and affordable access to all small business, including underserved communities, rural communities, and minority and women-owned businesses.

h) Provide technology education and training by redirecting existing federal programs through private sector small businesses.

i) Include small business representation on all NII/GII-related federal commissions and committees.

j) Require government agencies utilizing EC/EDI technology to use a standard technology accessible and affordable to small businesses.

k) Create an on-line one-stop electronic clearinghouse service coordinated by SBA/SBDC to provide access via the information superhighway, for example the World Wide Web, etc. to technical, legal, patent, regulatory, environmental, commerce and government procurement/bidding opportunity information.

l) The Economic Classification Policy Committee should review and revise SIC codes every three to five years to reflect economic advancements of American society, for example the definition of "manufacturer" to include "knowledge-based manufacturing" and "technology coconsulting."

#### *Environmental Policy*

9. (1342 votes received -- 78.8%)

A) Congress shall mandate a complete review of current laws and regulations relating to public health and safety, energy and the environment, such as the Resource Conservation and Recovery Act, Clean Water Act, and Clean Air Act, Endangered Species Act, and National Environmental Policy Act. This mandated review shall be completed within 6 months. Before Congress passes laws to be regulated through the EPA and any other agency, which require specific technology and/or procedures for protecting the environment, the agency(s) must conduct a cost-benefit analysis on a dynamic basis model and ensure that the particular regulation is based on sound science. For any proposed regulation said agency shall have 6 months to complete the cost-benefit analysis prior to implementation. In addition, regulations shall include a funding mechanism which will facilitate compliance and be enforceable on a site specific basis. All costs shall be allowed to be expensed within the current year. The regulated community shall be included

in any cost-benefit analysis. Where natural conditions exist, compliance based on technical expertise should be accepted as conforming to the intent of the regulation. Regulations should take into consideration site-specific conditions or future use. Any disputes about implementation must be subject to a non-governmental peer group review board. Voluntary environmental audit privilege and disclosure shall release the party(s) from administrative, civil, and or criminal penalties (so long as non-compliance is not caused by gross negligence or willful misconduct) when the disclosing entity initiates actions to comply within a reasonable time. No fines can be used to fund the fining agency.

Congress shall mandate EPA and any other agencies to review existing and new regulations to ensure that they adhere to the same standards as outlined in this document. All existing and proposed regulations must not create duplication of enforcement. There shall be no retroactive liabilities. Additionally, the fining ability of the EPA shall be revoked.

Federal agencies regulating environmental matters must make sure that current science, realistic risk assessments, net health analysis and cost benefit analysis shall apply in order to reduce, condense and/or eliminate regulations, prohibit abuse, allow adequate time to correct, and hold government and its employees accountable.

#### *Regulation and Paperwork*

10. (1332 votes received -- 78.2%)

A) Congress and the President should propose and enact legislation that **reforms civil justice and product liability legislation** to accomplish the following:

- a) Return to a fault-based standard of liability.
- b) Eliminate joint-and-several liability in cases where the defendants have not acted in concert.
- c) Limit non-economic damages (such as pain and suffering, and mental anguish) to three times the economic damages or \$250,000, which ever is greater.
- d) Restrict punitive damages to cases of willful and malicious conduct. The amount awarded should be split between the plaintiff and a judicial system trust.
- e) Reduce awards in cases where a plaintiff can be compensated by collateral sources, to prevent windfall double recovery.

f) Impose a uniform reasonable statute of limitations and repose in all civil actions, and hold defendants to a state-of-the-art in existence at the time the product was manufactured or a service performed, unless willful abuse is proven. There is no defense in drug or alcohol abuse.

g) Provide for periodic, instead of lump sum payments for future medical or lost income, administered by a court appointed trustee.

h) The prevailing party in a legal action should have a statutory right to recover costs and attorney fees from the non-prevailing party. (British Code)

#### *International Trade*

11. (1329 votes received -- 78.1%)

A) Small business owners are calling for the implementation of global "One-Stop Shopping" one-entity access to all government information and resources. Congress and the administration should create a pilot program that leverages private-sector resources to assist associations (private and public, particularly existing public/private partnership) in helping their small business members trade internationally (examples which would require no new funding include: model training programs, on-line database services, electronic learning networks, trade incubators - including those in U.S. and Foreign Commercial Service locations around the world, international trading cooperatives, trade missions, second- and third-tier exporting programs, niche market development programs and marketing-development cooperative programs.)

The Administration should appoint small business representatives to all advisory or dispute settlement bodies as part of the private-sector representation (example: the World Trade Organization dispute settlement panels.)

Congress and the Administration should maintain effective programs (eliminating ineffective programs) of the U.S. Department of Commerce International Trade Association that assist all American small business in entering and/or expanding export sales emphasizing emerging markets as a part of public/private partnership efforts to increase U.S. exports, U.S. jobs and U.S. economic vitality.

Note: No part of this issue shall be interpreted to be in conflict with GATT and/or other existing international trade agreements.

#### *Regulation and Paperwork*

12. (1328 votes received -- 78%)

A) Congress shall enact legislation and appropriate enforcement to include all of the following:

a) Require that all agencies provide a cooperative/consulting regulatory environment that follows due process procedures and that they be less punitive and more solution oriented in dealing with unintentional regulatory violations.

b) Require that fines take into account severity of infraction, size and type of company, past safety record and the frequency and severity of the violations.

c) Allow proposed fines to be used toward correcting violations.

d) Prohibit fines either for violations identified during a consulting visit requested by the company, or by an agency investigator and brought to the attention of the employer for the first time specific violation or if the company is found to be in substantial compliance; the employer and inspector should negotiate a reasonable time table for compliance and fines should be levied only for failure to comply within that time table.

e) Allow small business the option of binding arbitration to resolve any dispute with any federal agency.

f) Require that regulatory agencies put the fines that they impose and collect into the general treasury fund toward retiring the national debt; said agencies should be prohibited from receiving credit or usage of such monies.

g) Require that the liability of the employer and the employee be relative to their respective culpability.

h) Require enforcement actions to comply with American due process concepts: notice and opportunity to be heard, innocent until proven guilty, and an impartial judge.

#### *Technology*

13. (1292 votes received -- 75.9%)

A) Congress should enact legislative programs that expand the availability of technology commercialization funding and investment capital for small, rapidly growing innovative companies including, as a minimum:

a) Expand, improve and make permanent the SBIR/STTR programs by:

- 1) Excluding cost-sharing in proposal evaluation and scoring for either Phase I or Phase II and prohibit agencies from imposing artificial ceilings on indirect and IR&D expenses.
  - 2) SBA directives to agencies to budget an appropriate portion of administrative overhead and committing adequate personnel to managing the SBIR program.
- b) Encourage investment in small companies by:
- 1) Retaining and expanding targeted capital gains, including mutual fund and institutional investments in small business.
  - 2) Allowing tax-free rollovers for direct investments by all investors in small business.
  - 3) Providing additional incentives and reducing inhibiting regulations for investments in small companies by pension funds, institutional and/or corporate investors.
  - 4) Amending tax loss rules for NOL carry forward.
  - 5) Expanding and making permanent the R & E tax credit.
- c) Develop new public markets and instruments for small firm's securities.
- d) The Congress should support flexible manufacturing through the promotion of partnerships between small business and existing resources to create more efficient and flexible manufacturing processes, and nurture the growth of U.S. manufacturing industries.
- e) Direct the establishment of a temporary multi-agency task force to quickly address and solve the impediments to the above.

#### *Procurement*

14. (1285 votes received -- 75.4%)

A) Support fair competition: Congress should enact legislation that would prohibit government agencies, tax- and antitrust-exempt organizations from engaging in commercial activities in direct competition with small businesses.

#### *Human Capital*

15. (1283 votes received -- 75.3%)



A) Congress shall enact a 100% deduction for health care premiums for all business entities so that there is equity in taxation for the: Self-employed, Partnerships, S Corporations Limited Liability Corporation, and C Corporations. This benefit shall continue to be excluded for tax purposes from the income of employees of all small businesses regardless of form, including from the income of the self-employed.

#### Capital Formation

16. (1279 votes received -- 75.1%)

A) In order to increase the availability of capital for small business, Congress shall:

a) Authorize the SEC or an appropriate entity to create or streamline regulations and vehicles for public and small and large private company pensions, profit sharing, 401(k) plans, individual IRAs, Keogh, and SEP Plans to invest in small businesses by accessing the private capital markets and encouraging development of viable markets for small business loans.

b) Modify current legislation to facilitate the ability of an individual to invest up to 50% of his or her own self-directed and/or managed qualified plans including profit sharing, 401(k) plans, individual IRAs, Keogh, and SEP Plans in specific small business(es) of is/her own choice. These funds could be used as a direct investment or as collateral to obtain debt financing.

#### Capital Formation

17. (1275 votes received -- 74.9%)

A) Increased Availability of Small Business Loans--Banks are too highly regulated and restrictions on lending to small businesses are too severe. To increase the amount of small business lending (and create thousands of jobs) we propose: (a) small business loans should be reviewed collectively based on institutions' overall loan delinquency ratios, and (b) relaxing of collateral and income to debt ratio requirements allowing banks to make smaller loans based on character, personal background and credit worthiness, such as those loans permitted pursuant to the loan basket guidelines under the capital availability program. Also, Congress should enact or amend legislation to direct the Comptroller of the Currency and other examining authorities to allow banks, especially community banks, to invest more readily in small business through no-cost, low-cost incentives, such as:

a) Directing bank regulatory agencies to reduce paperwork commensurate with loan size;

- b) Reduce the number of federal agencies regulating banking through consolidation and coordination;
- c) Allow government deposits to be placed in a bank based on the percentage of that bank's portfolio that is placed in small business loans.

#### Taxation

18. (1258 votes received -- 73.9%)

**A) Tax Equity Now!** Congress & the President shall enact legislation which shall place large and small businesses on a level playing field for tax purposes... that is provide tax equity... in situations where small businesses are currently at a disadvantage. This should be done by uniformly applying the tax law to all forms of business (e.g. Proprietorships, Partnerships, C Corporations, S Corporations, Limited Liability Companies) with regard to tax rates, deductions, and exclusions as follows:

a) All forms of business entities to take deductions for 100% of the medical insurance premiums, dependent care, and other fringe benefits not currently deductible by self-employed individuals, partnerships, S Corporations, and Limited Liability Companies on behalf of all of their employees who are owners, partners shareholders, and/or members. As long as fringe benefits continue to be excluded from the income of employees of large C Corporations, then such benefits should be excluded from the income of employees of all small businesses, regardless of form, as well as from the income of self-employed individuals.

b) Pension plan benefits currently available to employees of large businesses to be made available to self-employed and employees of small businesses as provided in Recommendation #91.

c) All "C" Corporations to be taxed using the same graduated tax rate schedule. Section 11(b)(2) of the Internal Revenue Code, taxing the income of qualified personal service corporations at a flat 35% tax rate, should be repealed.

The privilege of deducting legitimate business expenses should no longer be based upon the entity chosen to operate such business. The choice of an entity within which one will operate a business should be a legal issue, not a tax issue.

#### Unclassified

19. (1249 votes received -- 73.3%)

A) The U.S. Small Business Administration is vital to the growth of small business in America. Efforts to make the SBA's programs more cost effective and efficient should be continued and encouraged. The SBA's "independent" agency role as the primary supporter of small business within the Federal Government should be enhanced by:

- a) Elevation of the U.S. Small Business Administration to a congressionally approved cabinet level position.
- b) Budget allocations to maintain, increase, and enhance the 7(a) Loan Guaranty Program.
- c) Budget allocations to maintain, increase, and enhance the 504 Loan Program.
- d) Budget allocations to make permanent the Small Business Development Center Program which provides business assistance to small businesses nationwide.
- e) Permanent maintenance of the "independent role" of the U.S. Small Business Office of Advocacy.
- f) All other SBA programs should be reviewed with substantial input from the private sector. Any programs deemed to be ineffective should be eliminated.

#### *Community Development*

20. (1239 votes received -- 72.7%)

A) Congress should further legitimize home-based business and restore the home office tax deduction by reversing the effect of the 1993 Soliman decision which requires that:

- a) Clients physically visit a home office; and,
- b) Business income be generated within the home office.

This would again allow essential administrative, operational and/or management tasks to qualify a home office as the "principal place of business."

#### *International Trade*

21. (1181 votes received -- 69.3%)

A) Congress and the President shall authorize and encourage the ExIm Bank and the SBA to sponsor revitalized fund programs designed to foster the financing of international trade (goods and services) including the new Export Working Capital Program to:

- a) Provide pre-export financing, unsecured working capital loans, transaction-based loans and pooled loans, rather than balance sheet and asset-based loans;
- b) provide educational programs for regional and local banking and financial institutions on the methods to finance exports of small businesses;
- c) Educate and inform the small business community on available programs to finance exports;
- d) Coordinate the efforts of various federal agencies that attempt to provide financing for exports; and
- e) Provide credits and other incentives for small business to develop and expand into foreign markets.

#### *Environmental Policy*

22. (1118 votes received -- 65.6%)

A) Federal policy regarding use of private property within the context of environmental issues should be reviewed and substantially revised. EPA and state-related penalties should be reviewed to confirm that the real potential for environmental harm, risk assessment, and cost-benefit analysis are used in land use decisions. The issues of takings, wetlands, and brownfields should receive special attention, as articulated below.

#### Takings

Any governmental action, law, or regulation that deprives a property owner of value or benefits of his or her private property shall constitute a "Taking" for which said property owner shall be entitled to full "Fair market value" compensation. Specifically, government should examine the economic impact before property is taken and prohibit the taking of property without just compensation.

#### Wetlands

Congress should direct the following changes in wetlands laws and regulations:

- a) If regulations affect a property use after it is acquired, the property owner should be compensated.
- b) The Army Corps of Engineers should have exclusive jurisdiction over section 404.
- c) Use-based regulations should be encouraged based on relative importance of a wetland to the local environment.

- d) A statutory definition of wetlands should be adopted using saturation at start of a growing season as a criterion.

#### Brownfields

Congress should enact legislation to encourage reuse of industrial land as follows:

- a) Direct EPA to specify the circumstances under which it would or would not sue a business that is involved with a state approved reclamation project.
- b) For brownfield projects in which cleanup is commensurate with the intended use, EPA should be required to enter into binding agreements with the parties that no future federal action will be taken.

#### International Trade

23. (1080 votes received -- 63.4%)

A) The President shall direct the U.S. Trade Representative to lead an international effort to protect the **ownership of intellectual property** and to ensure adoption of reciprocal uniform standards, centralized filing and an efficient international dispute resolution procedure for registration and enforcement of trademarks and trade names, working with NAFTA, GATT and other treaty partners. We further recommend that Congress protect international patent rights in a way that takes into account the needs of small business, including retaining the patent term to run for twenty years from date of application or seventeen years from date of issue, whichever is longer, that patent application remain unpublished until the patent is granted, and that the patent remains with the first to invent rather than first to file.

#### Taxation

24. (1054 votes received -- 61.9%)

A) Congress should **modify and expand the 50% capital gains exclusion for small business stock** passed in the 1993 Revenue Reconciliation Act so that it provides a front-end, as well as a back-end incentive for investment in small businesses. Specific Recommendations:

- a) Allow investors to sell funds in any investment and roll the investment into a small company, as defined by the current law, within two years. Capital gains tax on assets sold would be deferred (using the same methods as like-kind exchanges). Taxes would be payable at the favorable small business rate if held for the specified period.



b) Phase in the preferential tax treatment over a five-year holding period. For example, an investor with a three-year holding period would pay:  $28\% - (28\% \times 50\% \times 60\%) = 19.6\%$ .

c) Amend Code Section 1202 to extend its benefits to S Corporations, partnerships, and sole proprietorships by defining a "qualified small business" to include all such business entities and extend the definition of a qualified trade or business under Section 1202 to all types of businesses.

#### Procurement

##### TIE VOTE

25. (1046 votes received -- 61.4%)

A) The Davis-Bacon Act of 1931 and The Service Contract Act of 1965 should be completely repealed.

#### Regulation and Paperwork

##### TIE VOTE

26. (1046 votes received -- 61.4%)

A) Congress shall enact legislation and appropriate enforcement provisions to include all of the following:

a) Require all agencies to simplify language and forms required for use by small business and that only the English language be required.

b) Require all agencies to sunset and reevaluate all regulations every five years, using the same standards required for new regulations, with the goal of reducing its total paperwork burden by at least five percent each year for the next five years.

c) Require agencies to assemble information through a single source on all small business related government programs, regulations, reporting requirements, and key federal contact's names and phone numbers, with as much as is feasibly available by on line computer access.

d) Eliminate duplicate regulations from multiple government agencies.

#### Community Development

27. (1035 votes received -- 60.8%)

A) The U.S. Department of Education in cooperation with the U.S. Small Business Administration should work constructively to encourage the future growth of small business enterprises by promoting entrepreneurship education across America's school systems (K - Adult Education). It would be accomplished in the following manner.

a) Develop and implement a comprehensive school-based youth entrepreneurship program that creates real world business exposure and mentorships.

b) The program would be under the auspices of the Department of Education and funded by grants through public/private partnerships.

c) All funds would be matched 1-1 in the community served by the program.

d) Businesses would receive tax incentives for financially supporting the entrepreneurship training programs in their area.

#### *Regulation and Paperwork*

28. (1030 votes received -- 60.5%)

A) Small business and OSHA must work together in a non-adversarial, supportive relationship to attain public policy safety goals. To accomplish this, Congress must pass legislation as follows:

a) Require that voluntary compliance audits be performed within sixty days of a request by a small business. Such audits must be educational and non-threatening with written results and no fines issued.

b) Businesses which have completed a voluntary inspection and have corrected any deficiencies within the time allotted, will not be fined at a subsequent inspection for deficiencies which were missed or interpreted differently by the first inspector.

c) Require that all enforcement inspections, no matter how limited the scope of the inspection, will result in an overall inspection score or grade to be issued in writing by the inspector. On the basis of that grade, no fines or penalties may be issued for deficiencies found if the facility, (or that portion of the facility inspected), has been found to be in substantial compliance. In addition, in those cases where at least 90% of the entire facility has been inspected and the overall grade indicated that the company is in substantial compliance, OSHA will issue a letter of commendation

recognizing the company for its efforts. If needed, a definition of substantial compliance would include:

- 1) limited number of violations/deficiencies found vs. number of items inspected.
  - 2) company has an active safety committee or program and demonstrates commitment to safety by management.
  - 3) major programs, i.e., right-to-know, confined space, lock out/tag out, training, etc., in place.
- d) Amend regulations to assign responsibility for regulatory compliance to the employee as well as the employer.
- e) Amend OSHA regulations to require that when an employer and/or employee notifies OSHA officially that compliance has been achieved, OSHA must confirm that compliance has occurred within seventy-two hours of notification.
- f) Amend regulations to require OSHA not to make any inspections (unless voluntary) on any small business workplace and/or worksite unless an accident has been recorded and reported.
- g) Amend OSHA regulations to require a review and the development of construction standards that reflect the needs of industry-use groups.

#### Capital Formation

29. (1027 votes received -- 60.3%)

- A) The Small Corporate Offering Registration (SCOR) was meant to be a means for self reliant small business owners to raise equity capital with a minimum of professional assistance (legal and accounting services) and the lowest origination costs. To facilitate the use of SCORs, we proposed that the SEC/Congress raise the \$1 million per year ceiling to \$5 million, remove limits on the number of investors, allow for "tombstone advertising" of stock offerings and fund educational programs for investors and issuers to be administered at state and local levels. A greater degree of uniformity of state laws or reciprocity between state would be encouraged by the SEC through granting educational grants to states that accomplish this goal.

#### Capital Formation

30. (1009 votes received -- 59.2%)

A) To increase the availability of growth capital to invest in small businesses, Congress should:

a) Further privatize the Small Business Investment Company (SBIC) program, now administered by the SBA, by creating a new, government sponsored, but privately managed, corporation named Venture Capital Marketing Association or "Vickie Mae" which would function similar to the Federal National Mortgage Association. (Fannie Mae);

b) Extend the capital gains tax deferment currently afforded investments rolled into Specialized Small Business Investment Companies (SSBICs) to include investments in SBICs to encourage more investment in new SBICs;

c) Remove barriers to pension funds, foundations and endowments wishing to invest in SBICs and SSBICs; eliminate the "unrelated business taxable income" (UBTI) tax on all such activities; and

d) Reduce the minimum capital size requirements for establishing SBICs owned by regulated financial institutions, thereby encouraging them to provide equity to small businesses provided that no leverage is utilized by such SBICs until current minimum capitalization for leverage is achieved.

#### Main Street

31. (997 votes received -- 58.5%)

A) Congress must remove the barriers that prevent franchisees, dealers and product distributors from exercising their basic legal and constitutional rights by enacting HR 1717, now before the 104th Congress.

#### Taxation

32. (990 votes received -- 58.1%)

A) Congress should permit deductions of expenses up to \$250,000 annually for the purchase of new or used equipment for use in a small business and should remove the cap of \$200,000 and have no upper qualifying limit on the Section 179 election.

#### Taxation

#### TIE VOTE

33. (974 votes received -- 57.2%)

A) Congress should enact legislation that would prevent it from raising taxes retroactively.

*Human Capital**TIE VOTE*

34. (974 votes received -- 57.2%)

A) The President and Congress to enact legislation that **consolidates** the current **federal workforce programs** into state block grants that:

- a) Provides local control of specific skills training based on local needs.
- b) Requires states to allow participation by small businesses with fewer than 500 employees for on-the-job training of new and existing workforces.
- c) Provides tax incentives to small businesses that fund their own workforce training programs.
- d) To encourage public-private partnerships of job training.

*Procurement*

35. (968 votes received -- 56.8%)

A) Congress should enact legislation to designate a **national certification organization**. This organization will be initially funded by Congress to establish a database of certified small business, small disadvantaged business, and small business owned by women. It will serve as a one-stop clearinghouse that will assist all Federal Agencies by disseminating information in conjunction with their outreach efforts. To assure the credibility of federal procurement procedures:

- a) Congress will endorse one set of criteria for all local, city, state, and national agencies, adopted by a task force utilizing purchasing agents and small business owners, for uniform certification of small business, small disadvantaged business and small business owned by women where contracts involve federal funds.
- b) All Federal Agencies must establish standardized monitoring and compliance procedures;
- c) Independent, decentralized advisory boards should be established.
- d) States and local communities should be encouraged to recognize this certification on a reciprocal basis.
- e) All federal agencies should sponsor training to increase contracting/procurement officer awareness and use of reciprocal certification and database.



## Procurement

36. (954 votes received -- 56%)

A) **Increase Procurement Opportunities:** Increase the opportunities for all small businesses to equitably participate in federal procurement. Require that:

a) Not less than 35 percent of all government procurement monies (35% of prime and 35% of subcontracts) be awarded to small firms, such that at least:

1) 10% of prime and 10% of subcontract monies be awarded to minority businesses;

2) 5% of prime and 5% of subcontract monies be awarded to women-owned businesses; and

3) 10% of the government's total R&D budget be awarded to small businesses;

b) Small businesses be provided FREE and easy access to the government's electronic commerce system, FACENET, which profiles federal procurement opportunities;

c) Competition not be stifled by permitting federal agencies to "bundle" contract requirements beyond the reach and capability of many small firms; and,

d) Government agencies and tax exempt entities not allowed to unfairly compete with private firms by strengthening and expanding OMB circular A-76 to apply to all federal monies used directly or indirectly in the provision of goods and services and by increasing the scope and improving the enforcement of the unrelated business income tax (UBIT).

e) On sole source purchases above \$100,000, a query of PASS must be done by Federal agencies and prime contractors.

f) Require strict enforcement of the "Rule of Two" which requires federal agencies to restrict competition when two or more small businesses are capable and available to compete in price, quality and product/service for contracts of \$100,000 or more.

g) Require the Department of Defense and the Small Business Administration to sponsor EDI training through the already established network of small business procurement assistance centers located nationwide.

- h) Require the SBA to review and revise the size criteria downward to reflect the "true" small business.

*Community Development*

*TIE VOTE*

37. (949 votes received -- 55.7%)

A) Congress should enact legislation and the Administration should implement a process so that community and economic development programs could be maximized in distressed urban and rural areas by:

- a) Creating a "most favored" community status;
- b) Continuing and enhancing the SBA micro loan program;
- c) Vigorously enforcing the Community Reinvestment Act with special efforts placed on elimination of redlining;
- d) Providing economically oriented incentives such as abatement of federal income taxes to encourage the service/retail industry and other small businesses to locate and expand in these areas;
- e) continuing to emphasize small, non-traditional financial institutions, women and minority-owned business participation.

*Human Capital*

*TIE VOTE*

38. (949 votes received -- 55.7%)

A) The President and Congress must support the principle of **Equal Opportunity** which is provided for in the U.S. Constitution. Small, Women-owned and Minority-owned companies are entitled to equal consideration in banking, lending, bonding, contracting and hiring. Laws designed to address these disparities cannot be abolished or restricted.

Congress and the President should adopt the following principles under the recommendations of the White House Conference on Small Business:

- a) Government policy should be oriented toward diversity and fair economic opportunity that stimulates competition, increases productivity, creates jobs, and saves taxpayer dollars, thereby benefiting all Americans.
- b) There should be rigorous enforcement of this policy, including sanctions against fraud and abuse.

c) There should be periodic review to ensure compliance with this policy.

#### Taxation

39. (944 votes received -- 55.4%)

A) Congress should enact a comprehensive policy on capital gains that encourages the long-term investment in productive assets. This policy should include the following provisions.

a) Indexing of the cost basis of assets held more than one year.

b) A targeted capital gains exclusion of 50% of the indexed gain for an investment in a qualified small business held more than three years. A qualified small business should include all forms of business entities including passthroughs.

c) A maximum tax of 10% on the sale of a majority interest in a qualified small business held for more than 15 years.

d) A deferral of the gain on the sale of an interest in a qualified small business if the gain is reinvested in another qualified small business within two years.

e) The non-taxes portions of gains should be exempt from the alternative minimum tax calculations.

f) The capital loss reduction limitation of \$3,000 should be eliminated.

g) Reinstate the "General Utilities Doctrine" to eliminate the double taxation of proceeds from the sale of a business.

#### Main Street

40. (930 votes received -- 54.6%)

A) Congress must remove the barriers imposed on small business people in their relationship with large national and multi-national corporations, which prevent these small business people from mediating, arbitrating, or litigating in their own home state.

#### Unclassified

41. (916 votes received -- 53.8%)

A) Congress should develop a tangible process for monitoring the implementation progress of the recommendations that emerge from the WHCSB National Conference in June 1995. This monitoring process should be developed to make Congress and the President accountable

to the WHCSB participants, and should be achieved specifically by doing the following:

- a) Periodic updates to WHCSB participants by SBA's Office of Advocacy on the progress of implementation; and
- b) Annual summit of state WHCSB chairs, or their representatives, to discuss and evaluate the progress of implementation.

*Unclassified*

42. (913 votes received -- 53.6%)

A) Deficit spending continuing year after year poses a grave threat to our freedom as the world's leading economic power and to our free enterprise system. The President and Congress must take immediate steps to bring the Federal budget into balance by eliminating or reducing appropriate programs, commissions, agencies and departments and by instituting all other measures available to them.

*Environmental Policy*

43. (911 votes received -- 53.5%)

A) Congress should adopt changes in environmental statutes and regulations to assure that they are internally consistent for all requirements of the acts across all regions. Congress should require the EPA to demonstrate that enforcement of environmental laws and regulations is substantially equal in all areas of the country. The Clean Air Act, the Clean Water Act, the Endangered Species Act and other such acts should be enforced equitably across all regions.

*Procurement*

44. (846 votes received -- 49.7%)

A) Prompt Payment Act: The Office of Management and Budget must penalize Federal agencies and/or their grantees for incurring interest debt generated through delayed bill payment. Congress should modify this Act to include subcontractors. In cases of dispute between the government and a prime contractor, the subcontractor's payment must be promptly released as long as the subcontractor is not part of the dispute.

*Main Street*

45. (841 votes received -- 49.4%)

A) Congress should introduce and pass the National Disaster Protection Act which would include a Private Sector "All Risk"

**Property Insurance Program** offered through a newly created private non-profit organization to reinsure catastrophic losses. (Referenced in Report of Bipartisan Task Force on Disasters Recommendation #1 and #2, U.S. House of Representatives, December 14, 1994.)

#### *Main Street*

46. (829 votes received -- 48.7%)

A) Small business cannot compete with large businesses who use their economic power to extract unfair competitive pricing from manufacturers and service providers. **Antitrust laws should be strengthened and enforced** to prohibit abuses including unfair vertical integration, tying of pricing and product purchases, and predatory pricing tactics. The President should appoint a Presidential Commission on competition to study the enforcement and impact of the federal antitrust laws on ensuring the survival and diversity of small businesses.

#### *Human Capital*

47. (818 votes received -- 48%)

A) **Social Security Privatization:** Congress should **privatize Social Security** by adopting a graduated phase-out and giving full disclosure to the American People on the solvency of the fund and the amount of money they, as individuals, have paid into the fund. Adopting a minimum 15 year graduated phase-out schedule for government funding of Social Security for all new retirees; continue funding existing and "phase-out" retirees from the Employer's 6.2% (allow up to 15%) FICA portion and allowing for the employee's 6.2% FICA portion to be paid into their personal COMPULSORY-IRA/401K (CIRA) style account. Require all "CIRA's" to buy disability and survivor's insurance benefits equal to that of Social Security.

#### *Procurement*

48. (806 votes received -- 47.3%)

A) The President and Congress should continue to **support the Minority Small Business Capital Ownership and Development Program, SBA 8(a)**, and should enact legislation to make improvements with particular emphasis on:

a) Increase length of time.

b) All federal minority procurement policies and procedures must be incorporated and applied to any recipient of federal funds and become mandatory.



c) Increase utilization of 8(a) contractors by enforcing accountability of federal agencies in achieving their 8(a) goals.

d) The establishment of procedures for immediate relief in the event of catastrophic circumstances including but not limited to:

- 1) total dissolving of government agencies;
- 2) natural disasters;
- 3) base closures.

e) Relief to be in the form of extended participation in the 8(a) program for a reasonable time to recover from the catastrophic circumstance.

All of the above will follow the intent of the SBA 8(a) program to raise 8(a) businesses to a threshold allowing them to graduate to the open competitive market.

#### *Taxation*

49. (801 votes received -- 47%)

A) To promote a fair and equitable system of taxation, to encourage greater citizen participation and understanding, and to totally abolish the complicated present system, Congress should enact legislation that replaces the present system with a **simple tax for individuals and businesses.**

#### *Capital Formation*

50. (784 votes received -- 46%)

A) Comprehensive Federally Guaranteed Financing Reform: Congress shall continue to appropriate funds for the **Small Business Administration Loan Guarantee programs**, while focusing on the following:

- a) Prohibit excessive abuses in the over-collateralization of all federally guaranteed loan programs.
- b) Establish criteria which would allow greater access to all federally guaranteed loan programs.
- c) Increase the SBA loan guarantee programs from its current level of \$750,000 to \$1,000,000.

- d) Only primary owners (not passive investors) should be required to make personal guarantees on federally guaranteed loans.
- e) Increase the number of non-bank lenders (SBLC) eligible to process SBA loans.
- f) Require all federally guaranteed loans be processed in a timely manner.

#### *Procurement*

51. (751 votes received -- 44.1%)

A) In rendering a decision on *Aderand v. Pena*, the U.S. Supreme Court has potentially dealt the Minority and Women Business Community a severe and in some cases potentially fatal blow. While we recognize the separation of functions between the three branches of government, we are compelled out of an immediate and overwhelming sense of concern to recommend the following:

The President and Congress should proactively and aggressively respond to support the minority and women business community, and not use this decision in any way to influence any legislative action that would reduce support for our country's long standing commitment to promote fair and equitable opportunity for all of its citizens regardless of race, color, or gender.

#### *Unclassified*

52. (730 votes received -- 42.8%)

A) Congress should authorize and the President convene a **White House Conference on Small Business every four (4) years** to provide a continuing forum for owners and entrepreneurs to promote and work for the betterment of small business and ensure that they remain a vital part of the American economy.

#### *Taxation*

53. (681 votes received -- 40%)

A) Congress should enact legislation that requires a **2/3 supermajority vote** be required in both houses of Congress to enact legislation resulting in a tax increase.

#### *Capital Formation*

54. (672 votes received -- 39.4%)

A) Congress should support the investment in small businesses by:

a) Establishing a **tax free rollover provision** for the gains on sale of assets or ownership interests in a small business that are reinvested or rolled over into another small business within one year.

b) Congress should **amend Code Section 1202**, which is legislation excluding 50% of all capital gains from income, to extend its benefits to S Corporations and Limited Liability Companies by defining a "qualified small business" to include C Corporations and the other two entities, and **extend the definition of a "qualified trade or business"** under Section 1202 to all businesses.

c) Congress should enact tax legislation to allow a **tax deduction** against ordinary income for investments in small business.

#### *Human Capital*

55. (655 votes received -- 38.4%)

A) Congress should pass legislation assuring that, no business or worker would be discriminated against on any contract based solely on their choice not to be affiliated with a labor union or organization, and ensure the competition of trained qualified labor pool without **undue union pressures** and privileges by passing and enactment of:

a) The Open Contracting Act;

b) National Right to Work Legislation;

c) Never prohibit the hiring of permanent replacement workers during or following an economic strike. This includes taking whatever steps are necessary to override President Clinton's executive order which prohibits government contracting with firms who have replaced striking workers; and

d) Revise the Hobbs Act and the Federal Criminal Code along with other applicable legislation which would:

1) Reverse the Enmons ruling and eliminate other special privileges such as: union exemption from prohibitions against libelous and violent speech; union officials' legally-sanctioned power to force workers to pay union dues to an unwanted union;

2) Require union officials and unions to bear full responsibility for their violence and extortion and criminal acts just like everyone else;

- 3) Make union pensions and benefit trusts applicable to the same regulations as another commercial or employer provider plans;
- 4) Make unions subject to all discriminatory and civil rights provisions the same as all businesses, and liable for the blackballing of members who exercise their first amendment rights in opposition to the union leadership;
- 5) Use the RICO Act against Union Organizations involved in extortion and the commission of criminal acts; and
- 6) Strictly prohibit compulsory union membership.

*Community Development*

56. (598 votes received -- 35.1%)

**A)** Efforts of an individual state or municipality to benefit its local economy should not be made at the expense of other states or municipalities and at the peril of the strength of the entire economy. It should be the interest of the Congress to benefit the economic security of all the citizens of the United States by working to provide the resources to expand the economy nationwide. Therefore, Congress should **ban the direct or indirect utilization of Federal funds** of any kind, including subsidies, grants bonds or tax exempt financing that funds, in whole or in part, any special tax, infrastructure improvement and/or financing incentive by any state or municipality to lure **existing jobs and businesses from one location to another.**

*Human Capital*

57. (591 votes received -- 34.7%)

- A)** Congress should **amend the National Labor Relations Act** to:
- a) Protect small businesses from abuses and intimidation practices by organized labor.
  - b) Allow small businesses and their employees to discontinue relationships with labor organizations by simply writing a termination letter.
  - c) Seek fair and equitable resolution between labor and management.
  - d) Encourage cross training of craftsmen for greater productivity and efficiency.
  - e) Prevent the use of taxpayer funds to sue on behalf of multimillion dollar unions.



f) Encourage labor organizations to permit compensation based on productivity and quality of work.

g) Restore employers' ability to establish and use employee involvement committees by repealing the impact of the Electromotion Case 309 NRLB No. 163 and the Dupont Case 311 NRLB No. 88.

#### *Main Street*

58. (590 votes received -- 34.6%)

A) Congress should legislate the creation of a **Small Business Relief Fund** to economically assist small businesses that are displaced by the establishment of a big business in their localities where the big business will contribute an annual fee for the fund.

#### *Taxation*

59. (571 votes received -- 33.5%)

A) **Payroll Tax Relief:** A cap must be placed on the employer's portion of payroll taxes. Congress should reject all proposals to raise payroll taxes in its effort to repair the Medicare program. Payroll taxes are regressive and discriminate against small businesses.

#### *Capital Formation*

60. (554 votes received -- 32.5%)

A) Congress should require that federal agencies evaluate the performance of financial institutions under the **Community Reinvestment Act ("CRA")** on the basis of such institutions' efforts to meet the credit and banking needs of small businesses in their communities. In making such evaluations, those financial institutions which extend credit to small businesses without the support of government loan guarantees should be rated higher than those institutions which simply participate in SBA, FaHA and other guarantee programs, and/or purchase government insured loans and loan pools. Further, Congress should direct such federal agencies to issue a separate rating of each financial institution's CRA performance relative to small business (as opposed to the current practice of issuing one rating for overall CRA performance with respect to the entire community).





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